U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:16-cv-01969
Internal Use Only

Curtis et al v. Kunz-Freed et al
Assigned to: Judge Alfred H Bennett
Cause: 18:1964 Racketeering (RICO) Act

Date Filed: 07/05/2016
Jury Demand: None
Nature of Suit: 470 Racketeer/Corrupt Organization
Jurisdiction: Federal Question

Plaintiff

Candace Louise Curtis represented by **Candace Louise Curtis**
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925-759-9020
Email: occurtis@sbcglobal.net
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Plaintiff

Rik Wayne Munson represented by **Rik Wayne Munson**
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V.

Defendant

Candace Kunz-Freed represented by **Cory S Reed**
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ATTORNEY TO BE NOTICED

Defendant

Albert Vacek, Jr. represented by **Cory S Reed**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Bernard Lyle Matthews, III represented by **Bernard Lilse Mathews , III**
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Defendant

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Defendant

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TERMINATED: 10/31/2016
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Defendant

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TERMINATED: 10/31/2016
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Defendant

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Defendant

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Defendant

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Defendant

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Defendant

Christine Riddle Butts represented by **Laura Beckman Hedge**
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Defendant

Clarinda Comstock represented by **Laura Beckman Hedge**
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Defendant

Toni Biamonte represented by **Laura Beckman Hedge**
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Defendant

Bobbie Bayless represented by **Bobbie G Bayless**
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Defendant

Anita Brunsting represented by **Anita Brunsting**
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Defendant

Amy Brunsting represented by **Amy Brunsting**
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New Braunfels, TX 78132
PRO SE

Defendant

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Date Filed	#	Docket Text
07/05/2016	1 (p.16)	COMPLAINT against All Defendants (Filing fee $ 400) filed by Rick Wayne Munson, Candace Louise Curtis. (Attachments: # 1 (p.16) Civil Cover Sheet, # 2 (p.82) Cover Letter)(rosaldana, 4) (Main Document 1 replaced on 7/7/2016) (rosaldana, 4). (Entered: 07/05/2016)
07/05/2016	2 (p.82)	Plaintiff Candace Louise Curtis' MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 7/26/2016. (Attachments: # 1 (p.16) Proposed Order)(rosaldana, 4) (Entered: 07/05/2016)
07/05/2016		Initial Filing fee: $400 re: 1 (p.16) Complaint, receipt number HOU064001, filed. (thanniable, 4) (Entered: 07/05/2016)
07/06/2016	3 (p.84)	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 10/28/2016 at 09:00 AM in Courtroom 8B before Judge Alfred H Bennett(Signed by Judge Alfred H Bennett) Parties notified.(ckrus, 4) (Entered: 07/06/2016)
07/20/2016	6 (p.88)	CERTIFICATE OF INTERESTED PARTIES by Plantiffs, filed.(jtabares, 1) (Entered: 07/22/2016)
07/22/2016	4 (p.86)	WAIVER OF SERVICE Returned Executed as to Candace Kunz-Freed served on 7/9/2016, answer due 9/7/2016, filed.(Reed, Cory) (Entered: 07/22/2016)
07/22/2016	5 (p.87)	WAIVER OF SERVICE Returned Executed as to Albert Vacek, Jr served on 7/12/2016, answer due 9/12/2016, filed.(Reed, Cory) (Entered: 07/22/2016)
07/25/2016	7 (p.90)	Mail Returned Undeliverable as to Candace Louise Curtis re: 3 (p.84) Order for Initial Conference - FORM,, filed. (klopez, 7) (Entered: 07/28/2016)
07/28/2016		(Court only) Documents Sent by regular mail to Candace Louise Curtis re: 3 (p.84) Order for Initial Conference - FORM,, filed. (klopez, 7) (Entered: 07/28/2016)
08/05/2016	9 (p.93)	WAIVER OF SERVICE Returned Executed as to Christine Riddle Butts served on 7/9/2016, answer due 9/7/2016, filed.(dnoriega, 1) (Entered: 08/08/2016)
08/05/2016	10 (p.94)	WAIVER OF SERVICE Returned Executed as to Clarinda Comstock served on 7/9/2016, answer due 9/7/2016, filed.(dnoriega, 1) (Entered: 08/08/2016)

08/08/2016	8 (p.92)	WAIVER OF SERVICE Returned Executed as to Jason Ostrom served on 7/9/2016, answer due 9/7/2016, filed.(Ostrom, Jason) (Entered: 08/08/2016)
08/10/2016	11 (p.95)	WAIVER OF SERVICE Returned Executed as to Bobbie Bayless served on 8/2/2016, answer due 10/3/2016, filed.(dnoriega, 1) (Entered: 08/11/2016)
08/10/2016	12 (p.96)	NOTICE of Related Case by Rick Wayne Munson, filed. (dnoriega, 1) (Entered: 08/11/2016)
08/10/2016	13 (p.99)	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, Rick Wayne Munson, filed. Motion Docket Date 8/31/2016. (Attachments: # 1 (p.16) Proposed Order)(dnoriega, 1) (Entered: 08/11/2016)
08/12/2016	14 (p.104)	ORDER granting 13 (p.99) MOTION Permission for Electronic Case Filing (Signed by Judge Alfred H Bennett) Parties notified.(olindor, 4) (Entered: 08/12/2016)
08/16/2016	15 (p.105)	Request for Issuance of Summons as to Toni Biamonte, Amy Brunsting, Anita Brunsting, Bradley Featherston, Gregory Lester, Bernard Lyle Matthews, III, Stephen A. Mendel, Darlene Payne Smith, Neal Spielman, Jill Williard Young, filed.(Munson, Rik) (Entered: 08/16/2016)
08/17/2016		Summons Issued as to Toni Biamonte, Amy Brunsting, Anita Brunsting, Bradley Featherston, Gregory Lester, Bernard Lyle Matthews, III, Stephen A. Mendel, Darlene Payne Smith, Neal Spielman, Jill Williard Young. Issued summons returned to plaintiff by: First-class mail, filed.(hler, 4) (Entered: 08/17/2016)
08/18/2016		(Court only) ***Motion(s) terminated: 2 (p.82) MOTION for Permission for Electronic Case Filing. (ledwards, 4) (Entered: 08/18/2016)
08/24/2016	16 (p.125)	First CERTIFICATE OF INTERESTED PARTIES by Jason Ostrom, filed.(Ostrom, Jason) (Entered: 08/24/2016)
08/30/2016	17 (p.128)	WAIVER OF SERVICE Returned Executed as to Toni Biamonte served on 8/16/2016, answer due 10/17/2016, filed.(ssilva, 7) (Entered: 08/31/2016)
09/02/2016	18 (p.129)	Unopposed MOTION for Extension of Time File Responsive Pleading by Jason Ostrom, filed. Motion Docket Date 9/23/2016. (Attachments: # 1 (p.16) Proposed Order)(Ostrom, Jason) (Entered: 09/02/2016)
09/07/2016	19 (p.133)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 9/28/2016. (Reed, Cory) (Entered: 09/07/2016)
09/07/2016	20 (p.153)	MOTION to Dismiss *For Lack of Subject Matter Jurisdiction* by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 9/28/2016. (Reed, Cory) (Entered: 09/07/2016)
09/07/2016	21 (p.167)	

		CERTIFICATE OF INTERESTED PARTIES by Bobbie Bayless, filed.(Bayless, Bobbie) (Entered: 09/07/2016)
09/07/2016	22 (p.171)	CERTIFICATE OF INTERESTED PARTIES by Candace Kunz-Freed, Albert Vacek, Jr, filed.(Reed, Cory) (Entered: 09/07/2016)
09/07/2016	23 (p.174)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Bobbie Bayless, filed. Motion Docket Date 9/28/2016. (Attachments: # 1 (p.16) Proposed Order)(Bayless, Bobbie) (Entered: 09/07/2016)
09/08/2016	24 (p.180)	ORDER granting 18 (p.129) Unopposed MOTION for Extension of Time File Responsive Pleading. Responses due by 11/7/2016.(Signed by Judge Alfred H Bennett) Parties notified.(olindor, 4) (Entered: 09/09/2016)
09/12/2016	28 (p.1766)	MOTION for Access to Electronic Filing by Anita Brunsting, filed. Motion Docket Date 10/3/2016. (Attachments: # 1 (p.16) Proposed Order)(mxperez, 5) (Entered: 09/19/2016)
09/12/2016	29 (p.1772)	CERTIFICATE OF INTERESTED PARTIES by Anita Brunsting, filed.(ocasas, 7) (Entered: 09/19/2016)
09/15/2016	25 (p.181)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Jill Williard Young, filed. Motion Docket Date 10/6/2016. (Attachments: # 1 (p.16) Exhibit A)(Schaefer, Rafe) (Entered: 09/15/2016)
09/15/2016	26 (p.202)	Supplemental MEMORANDUM *addendum* re: 1 (p.16) Complaint by Candace Louise Curtis, filed. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Exhibit, # 6 (p.88) Exhibit, # 7 (p.90) Exhibit, # 8 (p.92) Exhibit, # 9 (p.93) Exhibit, # 10 (p.94) Exhibit, # 11 (p.95) Exhibit, # 12 (p.96) Exhibit, # 13 (p.99) Exhibit, # 14 (p.104) Exhibit, # 15 (p.105) Exhibit, # 16 (p.125) Exhibit, # 17 (p.128) Exhibit, # 18 (p.129) Exhibit, # 19 (p.133) Exhibit, # 20 (p.153) Exhibit, # 21 (p.167) Exhibit, # 22 (p.171) Exhibit, # 23 (p.174) Exhibit, # 24 (p.180) Exhibit, # 25 (p.181) Exhibit, # 26 (p.202) Exhibit, # 27 (p.1763) Exhibit, # 28 (p.1766) Exhibit, # 29 (p.1772) Exhibit, # 30 (p.1776) Exhibit, # 31 (p.1783) Exhibit)(Munson, Rik) (Entered: 09/15/2016)
09/16/2016	30 (p.1776)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Anita Brunsting, filed. Motion Docket Date 10/7/2016. (Attachments: # 1 (p.16) Proposed Order)(rnieto, 1) (Entered: 09/22/2016)
09/16/2016	31 (p.1783)	MOTION for Access to Electronic Filing by Amy Brunsting, filed. Motion Docket Date 10/7/2016. (Attachments: # 1 (p.16) Proposed Order) (rnieto, 1) (Entered: 09/22/2016)
09/16/2016	32 (p.1789)	CERTIFICATE OF INTERESTED PARTIES by Amy Brunsting, filed. (rnieto, 1) (Entered: 09/23/2016)
09/18/2016	27 (p.1763)	AFFIDAVIT, filed.(Munson, Rik) (Entered: 09/18/2016)
09/21/2016	35 (p.2296)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Amy Brunsting, filed. Motion Docket Date 10/12/2016.

		(Attachments: # 1 (p.16) Proposed Order)(avleal, 1) (Entered: 09/28/2016)
09/27/2016	33 (p.1793)	RESPONSE in Opposition to 20 (p.153) MOTION to Dismiss *For Lack of Subject Matter Jurisdiction*, 19 (p.133) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Exhibit, # 6 (p.88) Exhibit, # 7 (p.90) Exhibit, # 8 (p.92) Exhibit, # 9 (p.93) Exhibit, # 10 (p.94) Exhibit)(Munson, Rik) (Entered: 09/27/2016)
09/27/2016	34 (p.2060)	RESPONSE in Opposition to 23 (p.174) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Exhibit, # 6 (p.88) Exhibit, # 7 (p.90) Exhibit, # 8 (p.92) Exhibit, # 9 (p.93) Exhibit, # 10 (p.94) Exhibit, # 11 (p.95) Exhibit)(Munson, Rik) (Entered: 09/27/2016)
09/30/2016	36 (p.2303)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - *Rule 12(b)(6)* by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 10/21/2016. (Mendel, Stephen) (Entered: 09/30/2016)
09/30/2016	37 (p.2314)	First CERTIFICATE OF INTERESTED PARTIES by Bradley Featherston, Stephen A. Mendel, filed.(Mendel, Stephen) (Entered: 09/30/2016)
10/03/2016	38 (p.2318)	MOTION to Strike 26 (p.202) Memorandum,, by Jill Williard Young, filed. Motion Docket Date 10/24/2016. (Schaefer, Rafe) (Entered: 10/03/2016)
10/03/2016	39 (p.2328)	MOTION to Dismiss by Neal Spielman, filed. Motion Docket Date 10/24/2016. (Schexnayder, Martin) (Entered: 10/03/2016)
10/03/2016	40 (p.2335)	MOTION to Dismiss *based on lack of subject matter jurisdiction* by Neal Spielman, filed. Motion Docket Date 10/24/2016. (Schexnayder, Martin) (Entered: 10/03/2016)
10/03/2016	41 (p.2341)	RESPONSE to 25 (p.181) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Candace Louise Curtis. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Exhibit, # 6 (p.88) Exhibit, # 7 (p.90) Exhibit, # 8 (p.92) Exhibit, # 9 (p.93) Exhibit, # 10 (p.94) Exhibit, # 11 (p.95) Exhibit)(Curtis, Candace) (Entered: 10/03/2016)
10/04/2016	42 (p.2490)	JOINDER in 38 (p.2318) MOTION to Strike 26 (p.202) Memorandum,, , filed by Candace Kunz-Freed, Albert Vacek, Jr. (Reed, Cory) (Entered: 10/04/2016)
10/05/2016	43 (p.2494)	MOTION to Consolidate Lead Case No. 4:12-cv-0592 and Member Case No. 4:16-cv-01969 by Candace Louise Curtis, filed. Motion Docket Date 10/26/2016. (Curtis, Candace) (Entered: 10/05/2016)
10/05/2016	48 (p.2588)	RETURN of Service of SUMMONS Executed as to Jill Williard Young served on 8/26/2016, answer due 9/16/2016, filed.(mcodina,

		7) (Entered: 10/07/2016)
10/05/2016	49 (p.2590)	RETURN of Service of SUMMONS Executed as to Anita Brunsting served on 8/25/2016, answer due 9/15/2016, filed.(mcodina, 7) (Entered: 10/07/2016)
10/05/2016	50 (p.2592)	RETURN of Service of SUMMONS Executed as to Gregory Lester served on 9/2/2016, answer due 9/23/2016, filed.(mcodina, 7) (Entered: 10/07/2016)
10/05/2016	51 (p.2594)	RETURN of Service of SUMMONS Executed as to Amy Brunsting served on 8/30/2016, answer due 9/20/2016, filed.(mcodina, 7) (Entered: 10/07/2016)
10/05/2016	52 (p.2596)	RETURN of Service of SUMMONS Executed as to Stephen A. Mendel served on 9/2/2016, answer due 9/23/2016, filed.(mcodina, 7) (Entered: 10/07/2016)
10/06/2016	44 (p.2509)	CERTIFICATE OF INTERESTED PARTIES by Neal Spielman, filed.(Schexnayder, Martin) (Entered: 10/06/2016)
10/06/2016	45 (p.2511)	RESPONSE to 30 (p.1776) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 35 (p.2296) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Candace Louise Curtis. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit)(Curtis, Candace) (Entered: 10/06/2016)
10/06/2016	46 (p.2579)	CERTIFICATE OF INTERESTED PARTIES by Jill Williard Young, filed.(Schaefer, Rafe) (Entered: 10/06/2016)
10/07/2016	47 (p.2583)	Unopposed MOTION for Leave to File Motion to Dismiss In Excess of Page Limit by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. Motion Docket Date 10/28/2016. (Attachments: # 1 (p.16) Proposed Order)(Hedge, Laura) (Entered: 10/07/2016)
10/07/2016	53 (p.2598)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. Motion Docket Date 10/28/2016. (Hedge, Laura) (Entered: 10/07/2016)
10/07/2016	54 (p.2631)	MOTION for Leave to File Motion To Dismiss In Excess of Page Limit(Motion Docket Date 10/28/2016.), Unopposed AMENDED 47 (p.2583) MOTION by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. (Attachments: # 1 (p.16) Proposed Order)(Hedge, Laura) (Entered: 10/07/2016)
10/11/2016	55 (p.2636)	REPLY in Support of 25 (p.181) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Jill Williard Young. (Schaefer, Rafe) (Entered: 10/11/2016)
10/11/2016	61 (p.2692)	MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969 by Candace Louise Curtis, filed. Motion Docket Date 11/1/2016. (Attachments: # 1 (p.16) Proposed Order)(jengonzalez, 7) (Entered: 10/14/2016)
10/12/2016	56 (p.2643)	CERTIFICATE OF INTERESTED PARTIES by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed.(Hedge, Laura)

		(Entered: 10/12/2016)
10/13/2016	57 (p.2648)	RESPONSE to 53 (p.2598) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit)(Munson, Rik) (Entered: 10/13/2016)
10/13/2016	58 (p.2681)	PROPOSED ORDER re: 57 (p.2648) Response to Motion, filed.(Munson, Rik) (Entered: 10/13/2016)
10/13/2016	59 (p.2682)	MOTION to Stay *Rule 26(f) Conference and All Discovery Pending Resplution of Motions to Dismiss* by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 11/3/2016. (Reed, Cory) (Entered: 10/13/2016)
10/14/2016	60 (p.2687)	JOINDER in 38 (p.2318) MOTION to Strike 26 (p.202) Memorandum,, , filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Attachments: # 1 (p.16) Proposed Order)(Hedge, Laura) (Entered: 10/14/2016)
10/14/2016	62 (p.2707)	RESPONSE to 36 (p.2303) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - *Rule 12(b)(6)* filed by Candace Louise Curtis. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit)(Munson, Rik) (Entered: 10/14/2016)
10/17/2016	63 (p.2786)	REPLY to Response to 53 (p.2598) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Hedge, Laura) (Entered: 10/17/2016)
10/17/2016		(Court only) ***Motion(s) terminated: 47 (p.2583) Unopposed MOTION for Leave to File Motion to Dismiss In Excess of Page Limit. (ledwards, 4) (Entered: 10/17/2016)
10/18/2016	64 (p.2790)	ORDER granting 47 (p.2583) Motion for Leave to File; granting 54 (p.2631) Motion for Leave to File.(Signed by Judge Alfred H Bennett) Parties notified.(jdav, 4) (Entered: 10/18/2016)
10/18/2016	65 (p.2791)	RESPONSE to 38 (p.2318) MOTION to Strike 26 (p.202) Memorandum,, filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit)(Munson, Rik) (Entered: 10/18/2016)
10/18/2016	66 (p.2811)	REPORT of Rule 26(f) Planning Meeting by Rik Wayne Munson, filed.(Munson, Rik) (Entered: 10/18/2016)
10/19/2016	67 (p.2824)	OBJECTIONS to 66 (p.2811) Report of Rule 26(f) Planning Meeting , filed by Bobbie Bayless, Toni Biamonte, Anita Brunsting, Christine Riddle Butts, Clarinda Comstock, Bradley Featherston, Candace Kunz-Freed, Stephen A. Mendel, Neal Spielman, Albert Vacek, Jr, Jill Williard Young. (Schaefer, Rafe) (Entered: 10/19/2016)
10/21/2016	68 (p.2827)	Unopposed MOTION to Substitute Attorney Adraon D. Greene in place of Stephen A. Mendel by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 11/14/2016. (Attachments: # 1 (p.16) Proposed Order)(Greene, Adraon) (Entered: 10/21/2016)
10/24/2016	69 (p.2830)	

		RESPONSE to 40 (p.2335) MOTION to Dismiss *based on lack of subject matter jurisdiction*, 39 (p.2328) MOTION to Dismiss filed by Rik Wayne Munson. (Munson, Rik) (Entered: 10/24/2016)
10/25/2016	70 (p.2844)	RESPONSE in Opposition to 61 (p.2692) MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969, 43 (p.2494) MOTION to Consolidate Lead Case No. 4:12-cv-0592 and Member Case No. 4:16-cv-01969, filed by Jill Williard Young. (Schaefer, Rafe) (Entered: 10/25/2016)
10/27/2016	71 (p.2848)	MOTION for Joinder as to 38 (p.2318) MOTION to Strike 26 (p.202) Memorandum,, by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 11/17/2016. (Deiss, David) (Entered: 10/27/2016)
10/27/2016	72 (p.2852)	MOTION for Sanctions by Jill Williard Young, filed. Motion Docket Date 11/17/2016. (Attachments: # 1 (p.16) Proposed Order)(Schaefer, Rafe) (Entered: 10/27/2016)
10/28/2016	73 (p.2861)	RETURN of Service of SUMMONS Executed as to Bradley Featherston served on 10/18/2016, answer due 11/8/2016, filed.(ckrus, 4) (Entered: 10/28/2016)
10/28/2016	74 (p.2863)	RETURN of Service of SUMMONS Executed as to Bernard Lyle Matthews, III served on 10/18/2016, answer due 11/8/2016, filed.(ckrus, 4) (Entered: 10/28/2016)
10/28/2016	75 (p.2865)	RETURN of Service of SUMMONS Executed as to Darlene Payne Smith served on 10/20/2016, answer due 11/10/2016, filed.(ckrus, 4) (Entered: 10/28/2016)
10/28/2016		Minute Entry for proceedings held before Judge Alfred H Bennett. SCHEDULING CONFERENCE held on 10/28/2016. Motion hearing set for December 12, 2016 at 10:00 AM Appearances:Bob Harrell, Eron Reid, Zander Foley. Bobbie G Bayless, Laura Beckman Hedge, Stephen A Mendel, Adraon DelJohn Greene, Cory S Reed.(Court Reporter: H. Alcarez), filed.(ledwards, 4) (Entered: 10/28/2016)
10/28/2016	76 (p.2867)	NOTICE of Setting as to 25 (p.181) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 40 (p.2335) MOTION to Dismiss *based on lack of subject matter jurisdiction*, 36 (p.2303) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - *Rule 12(b)(6)*, 28 (p.1766) MOTION, 30 (p.1776) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 20 (p.153) MOTION to Dismiss *For Lack of Subject Matter Jurisdiction*, 35 (p.2296) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 23 (p.174) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 39 (p.2328) MOTION to Dismiss , 19 (p.133) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Parties notified. Motion Hearing set for 12/9/2016 at 10:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 10/28/2016)
10/28/2016	77 (p.2868)	CORRECTED NOTICE of Setting as to 25 (p.181) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 40 (p.2335) MOTION to Dismiss *based on lack of subject matter jurisdiction*, 30

		(p.1776) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 20 (p.153) MOTION to Dismiss *For Lack of Subject Matter Jurisdiction*, 53 (p.2598) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 35 (p.2296) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 23 (p.174) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 39 (p.2328) MOTION to Dismiss , 19 (p.133) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Parties notified. Motion Hearing set for 12/12/2016 at 10:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 10/28/2016)
10/31/2016	78 (p.2869)	First MOTION to Dismiss *Complaint* by Jason Ostrom, filed. Motion Docket Date 11/21/2016. (Attachments: # 1 (p.16) Proposed Order Order Granting Jason Ostrom's Motion o Dismiss Complaint)(Ostrom, Jason) (Entered: 10/31/2016)
10/31/2016	79 (p.2894)	RESPONSE to 61 (p.2692) MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969 filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Attachments: # 1 (p.16) Proposed Order)(Hedge, Laura) (Entered: 10/31/2016)
10/31/2016	80 (p.2902)	ORDER granting 68 (p.2827) Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherson. Attorney Stephen A Mendel terminated. (Signed by Judge Alfred H Bennett) Parties notified. (rosaldana, 4) (Entered: 11/02/2016)
11/02/2016	81 (p.2903)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Bernard Lyle Matthews, III, filed. Motion Docket Date 11/23/2016. (Mathews, Bernard) (Entered: 11/02/2016)
11/04/2016	82 (p.2907)	NOTICE of Setting. Parties notified. Motion Hearing set for 12/15/2016 at 11:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 11/04/2016)
11/07/2016	83 (p.2908)	First MOTION to Dismiss *Complaint* by Gregory Lester, filed. Motion Docket Date 11/28/2016. (Attachments: # 1 (p.16) Exhibit Exhibit A, # 2 (p.82) Exhibit Exhibit B, # 3 (p.84) Proposed Order Proposed Order)(Ostrom, Jason) (Entered: 11/07/2016)
11/10/2016	84 (p.2940)	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Darlene Payne Smith, filed. Motion Docket Date 12/1/2016. (Attachments: # 1 (p.16) Proposed Order Order)(Abrams, Barry) (Entered: 11/10/2016)
11/18/2016	85 (p.2970)	RESPONSE to 78 (p.2869) First MOTION to Dismiss *Complaint* filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Exhibit, # 6 (p.88) Proposed Order)(Munson, Rik) (Entered: 11/18/2016)
11/23/2016	86 (p.3002)	RESPONSE to 81 (p.2903) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Proposed Order)(Munson, Rik) (Entered: 11/23/2016)
11/27/2016	87 (p.3056)	

		RESPONSE to 83 (p.2908) First MOTION to Dismiss *Complaint* filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Proposed Order)(Munson, Rik) (Entered: 11/27/2016)
11/30/2016	88 (p.3086)	NOTICE of Resetting. Parties notified. Motion Hearing set for 12/15/2016 at 11:30 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 11/30/2016)
12/01/2016		(Court only) ***Motion(s) terminated: 54 (p.2631) MOTION for Leave to File Motion To Dismiss In Excess of Page LimitUnopposed AMENDED 47 (p.2583) MOTION. (ledwards, 4) (Entered: 12/01/2016)
12/01/2016	89 (p.3087)	RESPONSE to 84 (p.2940) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # 1 (p.16) Exhibit, # 2 (p.82) Exhibit, # 3 (p.84) Exhibit, # 4 (p.86) Exhibit, # 5 (p.87) Exhibit, # 6 (p.88) Exhibit, # 7 (p.90) Exhibit, # 8 (p.92) Exhibit, # 9 (p.93) Exhibit, # 10 (p.94) Exhibit Exhibits redacted, # 11 (p.95) Exhibit, # 12 (p.96) Proposed Order)(Munson, Rik) (Entered: 12/01/2016)
12/13/2016	90 (p.3323)	REPLY to Response to 84 (p.2940) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Darlene Payne Smith. (Abrams, Barry) (Entered: 12/13/2016)
12/15/2016		Minute Entry for proceedings held before Judge Alfred H Bennett. MOTION HEARING held on 12/15/2016. Motions taken under advisement Appearances:Zander Foley, Amy Brunsting, Bob Harrell, Anita Brunsting, Adron Green, Erin Reed, Rick Musuin. Bobbie G Bayless, Laura Beckman Hedge, Adraon DelJohn Greene, Cory S Reed, Bernard Lilse Mathews, III, Jason B Ostrom, Barry Abrams, Martin Samuel Schexnayder, Rafe A Schaefer.(Court Reporter: K. Metzger), filed.(ledwards, 4) (Entered: 12/15/2016)
05/16/2017	91 (p.3329)	ORDER granting 35 (p.2296) Motion to Dismiss for Failure to State a Claim; granting 36 (p.2303) Motion to Dismiss for Failure to State a Claim; granting 39 (p.2328) Motion to Dismiss; granting 40 (p.2335) Motion to Dismiss; denying as moot 43 (p.2494) Motion to Consolidate Cases; granting 53 (p.2598) Motion to Dismiss for Failure to State a Claim; denying as moot 61 (p.2692) Motion to Consolidate Cases; denying 72 (p.2852) Motion for Sanctions; granting 78 (p.2869) Motion to Dismiss; granting 81 (p.2903) Motion to Dismiss for Failure to State a Claim; granting 83 (p.2908) Motion to Dismiss; granting 84 (p.2940) Motion to Dismiss for Failure to State a Claim; granting 19 (p.133) Motion to Dismiss for Failure to State a Claim; granting 20 (p.153) Motion to Dismiss; granting 23 (p.174) Motion to Dismiss for Failure to State a Claim; granting 25 (p.181) Motion to Dismiss for Failure to State a Claim; granting 30 (p.1776) Motion to Dismiss for Failure to State a Claim.(Signed by Judge Alfred H Bennett) Parties notified.(ledwards, 4) (Entered: 05/16/2017)
05/16/2017		(Court only) ***Motion(s) terminated: 59 (p.2682) MOTION to Stay *Rule 26(f) Conference and All Discovery Pending Resplution of*

		Motions to Dismiss, 28 (p.1766) MOTION, 31 (p.1783) MOTION for Access to Electronic Filing, 71 (p.2848) MOTION for Joinder as to 38 (p.2318) MOTION to Strike 26 (p.202) Memorandum,, , 38 (p.2318) MOTION to Strike 26 (p.202) Memorandum,, . Moot via Doc. #91 which dismissed the entire case. (dosmith, 4) (Entered: 05/16/2017)
05/26/2017	92 (p.3336)	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Candace Louise Curtis, Rik Wayne Munson, filed.(olindor, 4) (Entered: 05/26/2017)
05/26/2017		Confirmation of receipt of payment from Rick Munson, Candace Luis Curtis in the amount of $ 505 Receipt date: 5/26/2017. Receipt number HOU72706. Purpose Description: Notice of Appeal. (olindor, 4) (Entered: 05/26/2017)
05/30/2017	93 (p.3337)	Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 92 (p.3336) Notice of Appeal. Fee status: Paid. Reporter(s): H. Alcaraz, K. Metzger, filed. (Attachments: # 1 (p.16) Notice of Appeal, # 2 (p.82) Order, # 3 (p.84) Docket Sheet) (scastillo, 1) (Entered: 05/30/2017)
05/30/2017		Appeal Review Notes re: 92 (p.3336) Notice of Appeal. Fee status: Paid. The appeal filing fee has been paid. Hearings were held in the case. DKT13 transcript order form(s) due within 14 days of the filing of the notice of appeal. Number of DKT-13 Forms expected: 2, filed.(scastillo, 1) (Entered: 05/30/2017)
06/05/2017	94 (p.3362)	DKT13 TRANSCRIPT ORDER REQUEST by Curtis. This is to order a transcript of Scheduling Conference 10/28/2016 before Hon. Judge Alfred H. Bennett. Court Reporter/Transcriber: Heather Alcaraz. This order form relates to the following: Scheduling Conference,, filed.(Munson, Rik) (Main Document 94 replaced on 6/6/2017) (bcampos, 1). (Entered: 06/05/2017)
06/05/2017	95 (p.3363)	DKT13 TRANSCRIPT ORDER REQUEST by Munson. This is to order a transcript of Motion Hearing on 12/15/2016 before the Hon. Alfred H. Bennett. Court Reporter/Transcriber: Kathy Metzger. This order form relates to the following: Motion Hearing,, filed.(Munson, Rik) (Main Document 95 replaced on 6/6/2017) (bcampos, 1). (Entered: 06/05/2017)
06/08/2017		Assignment of USCA No. 17-20360 re: 92 (p.3336) Notice of Appeal, filed.(bcampos, 1) (Entered: 06/08/2017)
06/27/2017	96 (p.3378)	APPEAL TRANSCRIPT re Motion Hearing held on 12/15/2016 before Judge Alfred H Bennett. Court Reporter/Transcriber K. Metzger. Ordering Party: Rik W. Munson. This transcript relates to the following: 95 (p.3363) Appeal Transcript Request. Release of Transcript Restriction set for 9/25/2017, filed. (kmetzger) (Entered: 06/27/2017)
06/28/2017	97 (p.3365)	Notice of Filing of Official Transcript as to 96 (p.3378) Transcript - Appeal,. Party notified, filed. (dbenavides, 1) (Entered: 06/28/2017)
07/05/2017	98 (p.3367)	

		APPEAL TRANSCRIPT re Initial Conference held on 10/28/16 before Judge Alfred H Bennett. Court Reporter Heather Alcaraz. Ordering Party: Rik Munson. This transcript relates to the following: 94 (p.3362) Appeal Transcript Request, 92 (p.3336) Notice of Appeal. Release of Transcript Restriction set for 10/3/2017, filed. (halcaraz,) (Entered: 07/05/2017)
07/06/2017	99 (p.3366)	Notice of Filing of Official Transcript as to 98 (p.3367) Transcript - Appeal,. Party notified, filed. (dhansen, 4) (Entered: 07/06/2017)
07/06/2017		(Court only) Set/Cleared Flags. Appeal_Nat flag cleared. (dnoriega, 1) (Entered: 07/06/2017)

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

Candace Louise Curtis	§	
Rik Wayne Munson	§	
Private Attorneys General Plaintiffs	§	
	§	
vs.	§	
	§	Civil Action No._____
Candace Kunz-Freed	§	
Albert Vacek, Jr.	§	
Bernard Lyle Mathews III	§	
Neal Spielman	§	
Bradley Featherston	§	
Stephen A. Mendel	§	
Darlene Payne Smith	§	
Jason Ostrom	§	
Gregory Lester	§	
Jill Willard Young	§	
Christine Riddle Butts	§	
Clarinda Comstock	§	
Toni Biamonte	§	Demand for Jury Trial
Bobbie Bayless	§	
Anita Brunsting	§	
Amy Brunsting	§	
Does 1-99	§	
Defendants in their individual capacities	§	

United States Courts
Southern District of Texas
FILED

JUL 05 2016

David J. Bradley, Clerk of Court

VERIFIED COMPLAINT FOR DAMAGES

1. 18 U.S.C. §1962 (c) Violations of the Racketeer Influenced Corrupt Organization Act involving multiple predicate acts that include both spoke and hub, and chain conspiracies.
2. 18 U.S.C. §1962 (d) Conspiracy to violate 18 U.S.C. §1962 (c)
3. 42 U.S.C. §1983 Substantive Due Process State Actor Conspiracy Against Civil Rights;
4. 42 U.S.C. §1985 Conspiracy to Deny Equal Protection of Law;
5. 18 U.S.C. §242 Conspiracy to deprive plaintiff of impartial forum;
6. Breach of Fiduciary to the Public Trust;
7. In Concert Aiding and Abetting Breach of Fiduciary both Public and Private;
8. In Concert Aiding and Abetting Misapplication of Fiduciary; and,
9. The right of claims provided at 42 U.S.C. §1988(a), 18 U.S.C. §1964 (c) and Rule 10b-5 Securities Exchange act of 1934 (17 C.F.R. §240.10b-5) and the right of private claims implied therefrom.

This lawsuit raises concerns affecting the public interest

I. Verified Complaint

1. COMES NOW Rik Wayne Munson and Candace Louise Curtis, Plaintiffs in the above-styled and numbered cause, filing this Complaint against Defendants: Candace Kuntz-Freed, Albert Vacek Jr., Bernard Lyle Mathews III, Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, Christine Riddle Butts, Clarinda Comstock, Toni Biamonte, Bobbie Bayless, Anita Brunsting, Amy Brunsting and Does 1-99 (collectively, "Defendants") and in support thereof would show unto the Court the following matters and facts. Plaintiffs have personal knowledge and are also informed and believe and therefore aver that:

II. Jurisdiction

2. Jurisdiction of this Honorable Court is invoked pursuant to 28 USC §1331 and 18 U.S.C. 1964 (c), as the substantive claims in this action raise federal questions arising under the Racketeering Influenced Corrupt Organizations Act (RICO) 18 U.S.C. §1961–1968 and the right of claims at 18 U.S.C. §1964(c) (civil remedy for RICO violations) and under 42 U.S.C. §§1983 and 1985 (remedies for color of official right and other Civil Rights violations).

3. This Court has supplemental jurisdiction over the state law and common law tort claims under 28 U. S. C. §1367(a), because the claims arise out of the same controversy, transactions and occurrences.

4. This Court has supplemental jurisdiction pursuant to the Federal Declaratory Judgment Act of 1946: Title 28 United States Code §§2201-2202, RICO 18 U.S.C. § 1965(a), (b), and (d); and Rules 57 and 65 of the Federal Rules of Civil Procedure; and pursuant to the general legal and equitable powers of this Court.

5. This Court also has supplemental jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act[1] (15 U.S.C. §78aa) and exclusive jurisdiction over these claims, as this action also arises under Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the right of private claims implied therefrom.

6. Venue is proper in the Southern District of Texas under 28 USC §1391(a)(1), because all of the events herein complained of occurred in the Southern District of Texas and elsewhere within the jurisdiction of the Court.

III. Parties

7. Plaintiffs incorporate by reference herein all allegations set forth above, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth.

DEFENDANTS

8. Defendant Candace Kuntz-Freed is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Candace Kuntz-Freed
9545 Katy Freeway, Suite 390,
Houston, Texas 77024

At all times material to this complaint Defendant Candace Kunz-Freed was a person, attorney with the Vacek Law firm, a partner in Vacek & Freed PLLC and also a Texas Notary Public, engaged in the practice of law at 11777 Katy Freeway, Suite 300 South, Houston, Texas 77079-9545.

9. Defendant Albert Vacek Jr. is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

[1] Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

Albert Vacek, Jr.
11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

At all times material to this complaint Defendant Albert Vacek Jr. was a person, attorney with the Vacek Law firm and a partner in Vacek & Freed PLLC engaged in the practice of law at 11777 Katy Freeway, Suite 300 South, Houston, Texas 77079.

10. Defendant Bernard Lyle Mathews III. is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Bernard Lyle Mathews III
11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

At all times relevant to this complaint Defendant Bernard Lyle Mathews III was a person, an attorney with the Vacek Law firm a.k.a. Vacek & Freed PLLC, engaged in the practice of law at 11777 Katy Freeway, Suite 300 South, Houston, Texas 77079.

11. Defendant Neal E. Spielman is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

At all times material to this complaint Defendant Neal E. Spielman was a person engaged in the practice of law at 1155 Dairy Ashford, Suite 300, Houston, Texas 77079.

12. Defendant Bradley Featherston is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Bradley E. Featherston
Featherston Tran PLLC
20333 State Highway 249, Suite 200
Houston, Texas 77070

At all times material to this complaint Defendant Bradley Featherston was a person engaged in the practice of law at The Mendel Law Firm, L.P., 1155 Dairy Ashford, Suite 104, Houston, Texas 77079.

13. Defendant Stephen A. Mendel is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

At all times material to this complaint Defendant Stephen A. Mendel was a person engaged in the practice of law at 1155 Dairy Ashford, Suite 104 Houston, Texas 77079

14. Defendant Darlene Payne Smith is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Darlene Payne Smith
Crain, Caton & James
Five Houston Center, 17th Floor
1401 McKinney, Suite 1700
Houston, Texas 77010

At all times material to this complaint, Defendant Darlene Payne Smith was a person engaged in the practice of law at 1401 McKinney, Suite 1700, Houston, Texas 77010.

15. Defendant Jason Ostrom is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Jason Ostrom
Ostrom Morris, PLLC
6363 Woodway, Suite 300
Houston, Texas 77057

At all times relevant to this complaint, Defendant Jason Ostrom was a person engaged in the practice of law at 5020 Montrose Blvd., Suite 310, Houston, Texas 77079.

16. Defendant Gregory Lester is an adult resident citizen of Texas with a principal place of business in Harris County, Texas and may be served with process at:

Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, Texas 77079

At all times material to this complaint Defendant Gregory Lester was a person engaged in the practice of law at 955 N Dairy Ashford Rd # 220, Houston, Texas 77079.

17. Defendant Jill Willard Young is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Jill Willard Young
MacIntyre, McCulloch, Stanfield and Young LLP
2900 Weslayan, Suite 150
Houston, Texas 77027

At all times material to this complaint Defendant Jill Willard Young was a person engaged in the practice of law at 2900 Weslayan, Suite 150, Houston, Texas 77027.

18. Defendant Christine Riddle Butts is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Christine Riddle Butts
Harris County Civil Courthouse
201 Caroline
Houston, Texas 77002

At all times material to this complaint, Defendant Christine Riddle Butts was a person, an elected State official occupying the office of Judge of Harris County's Probate Court No. 4, a position of public trust charged with the preservation of public justice, liable in her individual capacity for the non-judicial acts complained of herein.

19. Defendant Clarinda Comstock is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Clarinda Comstock
Harris County Civil Courthouse
201 Caroline
Houston, Texas 77002

At all times material to this complaint, Defendant Clarinda Comstock was a person, an Associate Judge of Harris County Probate Court No. 4, a position of public trust charged with the preservation of public justice, liable in her individual capacity for the non-judicial acts complained of herein.

20. Defendant Toni Biamonte is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Toni Biamonte
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline
Houston, Texas 77002

At various times relevant to this Complaint, Defendant Toni Biamonte was a person, employed as an Official Court Reporter at the Harris County Civil Courthouse, 201 Caroline, Houston, Texas 77002.

21. Defendant Bobbie Bayless is an adult resident citizen of Texas, with a principal place of business in Harris County, Texas and may be served with process at:

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098

At all times material to this complaint, Defendant Bobbie G. Bayless was a person engaged in the practice of law at 2931 Ferndale Houston, Texas 77098.

22. Defendant Anita Brunsting is an individual person, resident citizen of Victoria County, Texas, not a state actor, and may be served with process at:

Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904

23. Defendant Anita Brunsting owes fiduciary obligations to Plaintiff Curtis and has breached those fiduciary duties. Each of the above named Defendants were fully aware of the fiduciary duties Anita Brunsting owed to Plaintiff Curtis when they aided and abetted Anita's breach of those fiduciary duties.

24. Defendant Anita Brunsting is proximately related to Harris County Probate Court, an enterprise which engages in and the activities of which affect interstate and foreign commerce, through her attorneys: Co-Defendants, Bradley Featherston and Stephen Mendel and co-conspirator Defendant Candace Kuntz-Freed.

25. Defendant Amy Brunsting is an individual person, resident citizen of Comal County, Texas, not a state actor, and may be served with process at:

Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, Texas 78132

26. Defendant Amy Brunsting owes fiduciary obligations to Plaintiff Curtis. Each of the above named Defendants was fully aware of the fiduciary duties owed to Plaintiff Curtis by Amy Brunsting when they aided and abetted Amy's breach of those fiduciary duties.

27. Defendant Amy Brunsting is proximately related to Harris County Probate Court, an enterprise which engages in and the activities of which affect interstate and foreign commerce, through her attorney, Defendant Neal Spielman and co-conspirator Defendant Candace Kuntz-Freed.

28. At all relevant times, each RICO Defendant above-named was a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

PLAINTIFFS

29. Plaintiff Candace Louise Curtis (Curtis) is a citizen resident of California and, as set forth in the following paragraphs of this Complaint, Plaintiff Curtis has standing to bring this action as provided at 18 U.S.C. 1964(c) because she has suffered concrete financial injury to her business and property rights proximately caused by the Defendants' conspiracy to violate 18 U.S.C. §1962(c) as set forth in this Complaint.

30. At all times material to this complaint Plaintiff Curtis was a citizen resident of California and, as set forth in the following paragraphs of this Complaint, is actively engaged in defending her property interests in Harris County Texas Probate Court No. 4, an enterprise which engages in and the activities of which affect interstate and foreign commerce, and has standing to bring this action as provided at 18 U.S.C. 1964(c) and 42 U.S.C. §§1983, 1985 and 1988(a) having suffered tangible injury to business and property as the actual and proximate result of Defendants' color of law criminal conduct.

31. Plaintiff Curtis is a member of the body politic of this nation, entitled to and having a property interest in honest government and, because the issues raised herein affect the public interest at large, Plaintiff Curtis also has standing to bring this action on behalf of the public trust as a Private Attorney General, under the Racketeer Influenced Corrupt Organization Statutes, codified at 18 U.S.C. §§1961-1968 as hereinafter more fully appears.

32. At all times material to this complaint Plaintiff Rik Wayne Munson (Munson) was a citizen resident of California. Plaintiffs Munson and Curtis have been domestic partners for nine years, with overlapping business activities. Munson has also suffered tangible harm to his business and property proximately caused by Defendants' criminal color of law conduct.

33. Munson is a member of the body politic of this nation, entitled to and having a property interest in honest government and, because the issues raised herein affect the public interest at large, Munson also has standing to bring this action on behalf of the public trust as a Private Attorney General, under the Racketeer Influenced Corrupt Organization Statutes, codified at 18 U.S.C. §§1961-1968 as hereinafter more fully appears.

34. Plaintiffs can be served at 218 Landana Street, American Canyon, California 94503-1050.

IV. CLAIM 1
18 U.S.C. §1962(d) the Enterprise

Harris County Probate Court No. 4

35. At all times material to this Complaint:

36. Harris County Probate Court No. 4 constituted an "enterprise" within the meaning of Title 18 United States Code Section 1961(4), (hereinafter, "the enterprise"), a legal entity, which was engaged in, and the activities of which affected interstate and foreign commerce.

37. Harris County Probate Court was created by statute to administer, apply, and interpret the laws of the State of Texas in a fair and unbiased manner without favoritism, extortion, improper influence, personal self-enrichment, self-dealing, concealment, or conflicts of interest.

38. As a statutory state probate court the Harris County Probate Court was involved in various aspects of interstate and foreign commerce including, but not limited to, the adjudication of lawsuits involving parties residing or based outside the state of Texas; lawsuits involving properties in other states and in foreign nations; lawsuits involving property under the control of corporations, insurance companies, and other large business entities that conduct national and international business and pay litigation costs, judgments, and settlements, out of

funds derived from doing national and international business affecting interstate and foreign commerce.

39. As a statutory state probate court the Harris County Probate Court has original jurisdiction in cases involving the settling of estates that include titles to land, control over securities, control of large monetary sums, and other matters in which jurisdiction was not placed in another trial court.

40. As a statutory state probate court the Harris County Probate Court was involved in various aspects of interstate and foreign commerce including, but not limited to the settling of estates and the distribution of assets that included real property located in foreign states and countries, along with securities traded under the laws of the United States, and assets held by federally insured banks and brokerage companies.

The Vacek Law Firm a.k.a. Vacek & Freed PLLC

41. The Vacek Law Firm, also known as Vacek & Freed PLLC constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4), a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

42. Defendants Albert Vacek Jr. and Candace Kuntz-Freed were employed by or associated with The Vacek Law Firm.

The Mendel Law Firm, LP

43. The Mendel Law Firm constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4), a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

44. Defendants Bradley Featherston and Stephen Mendel were employed by or associated with The Mendel Law Firm.

Griffin & Matthews

45. The Griffin & Matthews law firm constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4), a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

46. Defendant Neal Spielman was employed by or associated with the Griffin & Matthews law firm.

Crain, Caton & James

47. The Crain, Caton & James law firm constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4), a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

48. Defendant Darlene Payne Smith was employed by or associated with the Crain, Caton & James law firm.

Bayless & Stokes

49. The Bayless & Stokes law firm constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4) a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

50. Defendant Bobbie Bayless was employed by or associated with the Bayless & Stokes law firm.

MacIntyre, McCulluch, Stanfied & Young LLP

51. The MacIntyre, McCulluch, Stanfied & Young L.L.P Law firm constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4) a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

52. Defendant Jill Willard Young was employed by or associated with the MacIntyre, McCulluch, Stanfied & Young LLP law firm.

V. Enterprise in Fact Association

53. Plaintiffs incorporate by reference herein all allegations set forth above and below, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth.

54. At all times material to this complaint:

55. Defendants Candace Kuntz-Freed, Albert Vacek Jr., Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, and Bobbie Bayless, were attorneys and officers of the Court practicing in the Harris County Probate Court, a legal entity, which was engaged in, and the activities of which affected interstate and foreign commerce in the Southern District of Texas and elsewhere within the Jurisdiction of the Court and were thus state actors within the meaning of 42 U.S.C. §1983 and 18 U.S.C. §1951, liable in their individual capacities.

56. At various times material to this complaint Defendants Candace Kuntz-Freed, Albert Vacek Jr., Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, Christine Riddle Butts, Clarinda Comstock, and Bobbie Bayless, were persons associated together in fact for the common purpose

of carrying out an ongoing criminal enterprise, as described in this Complaint; namely, through a multi-faceted campaign of lies, fraud, threats and official corruption in furtherance of a conspiracy involving a pattern of racketeering activity, constituting various "enterprise in fact associations" as defined in Title 18 United States Code Section 1961(4), which engaged in, and the activities of which affected interstate and foreign commerce. (See Boyle v. United States, 129 S. Ct. 2237, (2009)).

Harris County Tomb Raiders a.k.a. The Probate Mafia

57. At all times material to this complaint the "Harris County Tomb Raiders" (HCTR) was a secret society of persons, both known and unknown to Plaintiffs, associated together in fact for the common purpose of carrying out an ongoing criminal theft enterprise, as described in this Complaint; namely, through a multi-faceted campaign of lies, fraud, threats, and official corruption in furtherance of a conspiracy involving a pattern of racketeering activity as hereinafter more fully appears.

58. All Public Actor Defendants are believed to be regular participants in this secret society.

CLAIM 2
The Racketeering Conspiracy 18 U.S.C. 1962(C)

59. From various unknown dates, and continuing thereafter up to and including July 2008, and continuing thereafter up to and including March 9, 2016 and continuing thereafter, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, the Defendants: Candace Kuntz-Freed, Albert Vacek Jr., Bernard Lyle Mathews III, Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, Christine Riddle Butts, Clarinda Comstock, Toni Biamonte, Bobbie Bayless, Anita Brunsting, and Amy Brunsting, together with others known and unknown to Plaintiffs,

being persons employed by or associated with Harris County Probate Court, an enterprise which engaged in, and the activities of which affected interstate and foreign commerce, did at various times unlawfully, willfully and knowingly combine, conspire and agree with each other to violate 18 U.S.C. Sections 1962(c), by participating, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple predicate acts within the meaning of 18 U.S.C. §1961(1) in violation of 18 U.S.C. §1962(c) and (d) to wit:

a. Conspiracy to deprive the citizens of Texas and other litigants of the honest services of elected officials, 18 U.S.C. §§1341, 1343, & 1346.

i. 18 U.S.C. §1341 (Property Mail Fraud);

ii. 18 U.S.C. §§1341 and 1346 (Honest Services Mail Fraud);

iii. 18 U.S.C. §1343 (Property Wire Fraud);

iv. 18 U.S.C. §§1343 and 1346 (Honest Services Wire Fraud);

b. State Law Theft - Texas Penal Codes 31.02 and 31.03 and Hobbs Act Extortion 18 USCS §1951(b)(2) and 2;

c. Tampering with a federal judicial proceeding by false affidavit, 18 U.S.C. §§402, 1001 and 2 (overlap with 18 U.S.C. §§1503, 1505, 1512, 1621. 1622 and 1623; perjury, subornation of perjury, and false declarations).

d. Obstruction of Justice and conspiracy to obstruct Justice, 18 U.S.C. §371--conspiracy to injure or intimidate any citizen on account of his or her exercise or possibility of exercise of Federal right (overlap with 18 U.S.C. §§1503, 1510, 1512, and 1513)

e. Suborning perjury, 18 U.S.C. §1622, may also be an 18 U.S.C. §1503 omnibus clause offense.

f. Spoliation: Destruction or concealment of evidence or attempts to do so, 18 U.S.C. §1512(c) conspiracy (18 U.S.C. §1512(k)

g. Misapplication of fiduciary in excess of $300,000 Texas Penal Codes §§32.45, theft 31.02, 31.03

h. Illegal Wiretapping in violation of Texas Penal Code §16.02 and 18 U.S.C. §2511 (§§2510-22), as amended by the Electronic Communications Privacy Act (ECPA) (Pub. L. 99-508; 10/21/86) Title III of the Omnibus Crime Control and Safe Streets Act of 1968, (Pub. L. 90-351; 6/19/68), also known as the "Wiretap Act"

i. Identity Theft 18 U.S.C. §1028(a)(7)

j. False Instruments used to commit Banking Fraud 18 U.S.C. §1344

k. False Instruments used to commit Sections 18 U.S.C. §§1341, 1343 & 1346 (Property and Honest Services Mail and Wire Fraud)

l. False Instruments used to commit Extortion 18 U.S.C. §1951(b)(2) and 2

m. Aiding and abetting each of the above, (all actors, all counts) 18. U.S.C. §371

n. Conspiring to promote, conceal and protect predicate activities (a-m above) from discovery, investigation and prosecution by legitimate governmental interests.

60. The above enumerated "RICO Defendants" did unlawfully, willfully, and knowingly combine, conspire, and agree with each other and with other persons known and

unknown to Plaintiffs to violate 18 U.S.C. §1962(c) as described herein, in violation of 18 U.S.C. §1962(d).

61. In connection with the acts and omissions alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate public switched telephone network wire and cellular telephone communications, and the facilities of the national securities exchange.

62. Upon information and belief, these Defendants knew that they were engaged in a conspiracy to commit the predicate acts, and they knew that the predicate acts were part of such racketeering activity, and that the participation and agreement of each of them was necessary to facilitate the commission of this pattern of racketeering activity.

63. Upon information and belief, each above-named RICO Defendant agreed to conduct or participate, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S. C. §1962(c) and (d).

64. Each RICO Defendant knew about and agreed to facilitate the Enterprise's scheme to obtain property from Plaintiffs.

65. It was part of the conspiracy that the RICO Defendants and their co-conspirators would commit a pattern of racketeering activity in the conduct of the affairs of the Enterprise, including aiding, abetting, promoting and concealing the racketeering activity and predicate acts hereinafter set forth.

66. It was part of the racketeering conspiracy that through the use of estate plan instruments Defendants, acting in concert both individually and severally, would and did

intercept assets intended for the heirs of estates that pass through Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce.

67. It was part of the racketeering conspiracy that through the use of trust instruments Defendants, acting in concert, both individually and severally, would and did intercept assets intended for beneficiaries of trusts that pass through the Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce.

68. It was part of the racketeering conspiracy that "trust and estate plan attorneys" would use the "Doctrine of Privity" to shield their part in the pattern of racketeering activity from possible culpability or any liability to the intended victims of the inheritance expectancy interception scheme.

69. It was part of the racketeering conspiracy that attorneys participating in the scheme and artifice to deprive would use the Texas Attorney Immunity Doctrine to shield their part in the pattern of racketeering activity from possible culpability or any liability to the intended victims of the inheritance expectancy interception scheme.

70. It was part of the racketeering conspiracy that judges participating in the scheme and artifice to deprive would use the doctrines of Judicial, Qualified and Absolute Immunity to shield their participation in the pattern of racketeering activity from possible culpability or any liability to the intended victims of the inheritance expectancy interception scheme.

71. It was part of the racketeering conspiracy that through the use of guardianship actions Defendants, acting in concert, both individually and severally, would and did use the

Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce, to judicially kidnap and rob the elderly, our most vulnerable citizens, of their freedom, dignity, fundamental human and civil rights and property accumulated throughout a lifetime, often also robbing heirs and beneficiaries of familial relations and inheritance expectancies.

72. It was part of the racketeering conspiracy that Defendants would commit violations of constitutionally protected rights under the disguise of a statutory scheme.

73. It was understood that each conspirator would participate in the commission of at least two acts of racketeering activity in the conduct of the affairs of the enterprise, as part of the racketeering conspiracy.

74. It was also a part of the racketeering conspiracy that Defendants, acting in concert, both individually and severally, would and did promote, conceal, and otherwise protect the purposes of the racketeering activity from possible criminal investigation and prosecution as hereinafter more fully appears.

VI. Purposes of the Racketeering Activity

75. Plaintiffs incorporate by reference herein all allegations set forth above and below, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth and alleges that:

76. From an unknown date and continuing thereafter up to and including the specific events complained of herein, these Defendants, in concert with persons both known and unknown to Plaintiffs, individually and severally, conspired to participate and did participate in an organized criminal consortium for the purpose of actively redirecting trust, estate and other

third party property into the state probate courts, where Defendants operate to convert third party property to their own unjust self-enrichment.

77. It was a purpose of the racketeering activity that Defendants, acting in concert, both individually and severally, would and did loot assets held by private trusts and estates against the will of the victims, family members, and friends, through the use of guardianship protection statutes and other schemes.

78. It was a purpose for the racketeering activity that trust and estate plan attorneys acting in concert with other attorneys and with persons both known and unknown to Plaintiffs, would and did exploit the elders of our society for the purpose of syphoning off the assets of our eldest and most vulnerable citizens through the aforementioned schemes and artifices, as exemplified herein and elsewhere in the public domain and as hereinafter more fully appears.

79. The purpose for the racketeering activity was to facilitate the looting of wealth, also known as **Involuntary Redistribution of Assets** (IRA) from its rightful owners, for the unjust enrichment of attorneys and other legal professionals operating out of state probate courts, including but not limited to Harris County Probate Court No. 4 and these co-conspirator Defendants.

80. The specific quid pro quo method of profit sharing is unknown to Plaintiffs but appears to include political aspiration, judicial favors, campaign contributions, bribes and kickbacks, cronyism and "Good Ole Boy" networking.

81. The conclusion that there is a reciprocal stream-of-benefits necessarily flows from the facts of the in-concert illegal activities of the co-conspirators, as exemplified herein.

82. Based upon personal knowledge and upon information and belief Plaintiffs allege that:

83. The above enumerated "RICO Defendants" unlawfully, knowingly and willfully combined, conspired, confederated and agreed together and with others to violate 18 U.S.C. §1962(c) as described herein, in violation of 18 U.S.C. § 1962(d).

84. Upon information and belief, Each RICO Defendant knew about and agreed to facilitate the Enterprise's scheme to obtain property from Plaintiff and others, and to participate, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

85. The RICO Defendants knew that they were engaged in a conspiracy to commit the predicate acts, and they knew that the predicate acts were part of such racketeering activity, and that the participation and agreement of each of them was necessary to allow the commission of this pattern of racketeering activity. This conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. §1962(d).

86. Each of the above named RICO Defendants conducted or participated, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961 (5) and in violation of 18 U.S.C. § 1962(c) & (d), to wit:

Commercial Purpose

87. The constituent members comprising each ENTERPRISE are engaged in a concerted campaign to extort, defraud, trick, deceive and corruptly persuade their client victims (probate court litigants) to exercise proprietary control over, and extract maximum value from,

the target trust and/or estate, in much the same way a bankruptcy trustee operates to control a bankruptcy estate.

88. Further, in unfairly protecting their commercial purposes, each ENTERPRISE operative works with the others to harass, threaten, abuse, denigrate, impugn, threaten, and intimidate litigants, competitors, critics, reformers, and others.

89. The various ENTERPRISES operate as a "cabal", a semi-private, sometimes secret, informal affiliation of entities with public presence and identity that is wholly or partially inaccurate and misleading as to the true goals, affiliations, and processes of the cabal.

90. The ENTERPRISES achieve their respective purposes by collusion among operators and affiliates, who in their COMMERCIAL SPEECH represent to their clients that the relationships among the members are in compliance with legal and ethical PROFESSIONAL DUTIES when they, in fact, are not.

91. Funded by fraudulent exploitation of the parties, ENTERPRISE operators and affiliates engage in bribery, exchanging value, emoluments, patronage, nepotism, and/or kickback schemes within their networks to assure system-wide "cash flow" and continued viability and vitality of the ENTERPRISES.

92. ENTERPRISES refuse such cooperation with non-affiliates, thereby baring potential competitors. These bars include fraudulently manipulated referrals, representations, certifications, nepotism, illegal antitrust tactics, and manufactured pitfalls to support the pervasive "who you know" method the cabal uses in defiance of the rule of law.

93. Probate Mafia operators, like the attorney Defendants here, regularly breach one or more of their PROFESSIONAL DUTIES of loyalty, zealous advocacy, fiduciary

responsibility, and professional competence through one or more "false flag" frauds to induce, deprive, or deceive clients and other litigants not schooled in the law. These "False Flag" maneuvers involve one or more COMMERCIAL SPEECH misrepresentations to unsophisticated layperson parties, thereby depriving them of the benefits of legitimate legal professional services and perpetrating fraud upon the Court.

94. Probate Mafia operatives have developed numerous pernicious tools to maximize their benefits from the wealth redistribution. A prominent artifice is the "independent" appointee that appears in virtually every case.

95. Probate Mafia schemes and artifices also include such practices as Poser Advocacy. "Poser Advocacy" is the practice and sale of what appears to be the practice of law to inexperienced parties. Attorneys engaging in poser advocacy act to appeal to their client's emotions, greed, or other untoward ends to generate fees, with no beneficial legal work performed.

96. Poser Advocates write angry letters, exchange worthless formwork discovery, and repeatedly file baseless amendments and motions with no hope of productive benefit, for the sole purpose of generating a bill.

97. In the more sophisticated commercial legal marketplace poser advocacy is not tolerated, as clients insist upon, and attorneys abide by, legitimate practice and ethical standards.

98. Because of the unique nature of the clients and market, Probate Mafia members like these are generally able to pass off Poser Advocacy as if it was real legal work. It is not.

99. In the Probate Mafia enterprise scheme of things the familial wealth hijacker represents an exploitation opportunity and, as such, receives special attention.

VII. Means and Methods of the Racketeering Conspiracy

100. Plaintiffs incorporate by reference herein all allegations set forth above and below, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth and alleges that:

101. It was a part of the racketeering conspiracy that a modern day criminal cabal through a network of probate lawyers, judges, court appointed administrators, guardians, social workers, doctors and "care facilities" would use county courtrooms relying upon the judicially created and judicially enlarged doctrine of absolute judicial immunity, the Texas Attorney Immunity Doctrine, the Doctrine of Privity and the Probate Exception to federal diversity jurisdiction as a license to steal money and other liquid assets and to liquidate their victims' real and other property for their own unjust self-enrichment, all without their victim's consent and over their objections.

102. This looting has been given the appearance of legitimacy under the health and welfare label of "guardianship protection" stealing not only assets, but also the due process rights, liberty, and human dignity of their victims.

103. It was a part of the conspiracy that Defendants would and did use the Harris County Probate Courts and the offices of Judge to deprive the citizens of Texas and other litigants, of their right to the honest services of elected officials, while promoting, concealing, and otherwise protecting the purposes of the racketeering activity from possible criminal investigation and prosecution.

104. It was part of the racketeering conspiracy that Defendants would and did use the various probate instruments and legal artifice and that acting in concert, both individually and severally, Defendants would and did siphon off assets rightfully belonging to others.

105. It was part of the racketeering conspiracy that the various probate instruments would be and were designed to facilitate falsifications and alterations and that the enterprise participants would be selectively blind to the obvious inconsistencies, avoiding any questions of forgery or fraud appearing in the public record.

106. It was part of the racketeering conspiracy that Defendants acting individually and in concert would and did use the Harris County Probate Courts and the offices of Judge to trap litigant victims in an endless cycle of delay and expense until the victims were forced to settle for the least injustice in order to walk away with even a meager portion of what rightfully belongs to them from the onset.

107. It was part of the racketeering conspiracy that Defendants acting individually and in concert would obtain and did attempt to obtain improper dominion over the property of Plaintiff Curtis and others, attempting to obtain consent induced by the wrongful use of actual and threatened force, violence and fear of economic harm to Plaintiff Curtis' rights in property, using the 8/25/2010 extortion instrument, hereinafter more fully described.

108. It was part of the racketeering conspiracy that unscrupulous attorneys who market trust and estate plan instruments promising to provide asset protection, minimize taxes, avoid probate, and avoid guardianship, acting individually and in concert, would engage in the redirection of family trusts into the hands of the "Probate Cabal" by undermining those products when the aging client weakens and by generating conflicts amongst the beneficiaries, thus delivering their client's prosperity to the exact evil that victims were guaranteed protection from.

109. It was part of the racketeering conspiracy that Defendants, for their own unjust self-enrichment, acting individually and in concert, would use the Harris County Probate Court and the appearance of legitimacy that attaches to public offices and officers to manipulate and

game the legal process in ways that deprived citizens who came before the court of rights guaranteed and protected by our state and federal constitutions.

110. In the matter from which these RICO claims arise, "Curtis v Brunsting", both the estate instruments and the inter vivos family trust agreements were the vehicles used by Defendant enterprise acolytes to foster and maintain the estate and trust looting probate litigation that Decedents were promised the trust would, but did not, provide protection from.

111. As an actual consequence and proximate result of the actions of the very people who sold the Brunstings "Peace of Mind", promising that their products and services would provide protection from probate, the Brunsting trust and estate are caught in probate stasis.

112. Defendants, in concert, have maintained the litigation and are holding the Brunsting trusts hostage to a settlement agreement that will include the attorneys' fees getting paid from the trust corpus, in direct opposition to the Grantors express intentions.

113. In the case in point, Plaintiff/Beneficiary Curtis was at the precipice of legal victory and the enterprise stepped in to redirect the outcome away from the public record to a mediation/ADR bait-and-switch, in which the outcome is predetermined by the personal interests of enterprise acolytes and not by law.

114. In pursuit of that plan Plaintiff Curtis is being coerced into a staged mediation, with Defendants who have demonstrated no intention of honoring any legal or moral obligations.

115. It is also part of the conspiracy that the true purpose of mediation is to convert the controversy from breach of the trust agreement and the drafting of false instruments, into discussions regarding breach of a mediated settlement agreement which, like the family trust agreement and remand agreement, is certain to also not be honored by the acolytes.

116. In this way enterprise acolytes maximize the take while preventing the dirt from floating to the surface of the public record, and promoting, concealing, and otherwise protecting the purposes of the racketeering activity from possible criminal investigation and prosecution.

117. In the case in point, the probate Court judges and the attorneys are holding settlement of the Brunsting family of trusts hostage to the payment of attorneys' fees.

118. The controversy is over on the pleadings and Plaintiff Curtis prevails as a matter of law, but the lawyers and judges will not allow any resolution that does not have the lawyers walking away with the lion's share of the family inheritance, nor any solution that allows the facts to be compiled on the public record.

119. Defendant Candace Freed is neatly sequestered in the District Court so that she will never be confronted by a legitimate plaintiff and there is no executor occupying the office. There is no docket control order or trial date, and summary judgment motions were swept off the table on the very last day in which summary judgment motions were to be heard and the summary judgment motion hearing became a hearing on a motion for protective order regarding dissemination of illegally obtained wiretap recordings, in furtherance of a pattern of racketeering activity as hereinafter more fully appears.

VIII. Predicate Acts and Actors

120. Plaintiffs incorporate by reference herein all allegations set forth above and below, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth:

CLAIM 3 (Honest Services) 18 U.S.C. §1346 and 2

121. From an unknown date, known to be on or before July 21, 2015 and continuing thereafter up to and including September 10, 2015 and continuing thereafter up to and including March 9, 2016 and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, for the purpose of executing or attempting to execute a scheme and artifice to defraud and deprive, Defendants Neal Spielman, Bradley Featherston, Stephen Mendel, Greg Lester, Christine Butts, Clarinda Comstock, Jill Young, and Toni Biamonte, being "persons" employed by or associated with Harris County Texas Probate Court, an enterprise which engages in and the activities of which affect interstate and foreign commerce, together with persons both known and unknown to Plaintiffs, individually and severally, did unlawfully, willfully and knowingly conspire to alter the course of justice under color of official right, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, in that Defendants conspired to redirect civil litigation away from the public record to a staged mediation planned for the purpose of obtaining Plaintiff Curtis' property by consent, using disinheritance threats, that in order to get any of her property at all she will have to agree to "settle", for the purpose of adding delay and increasing expense, for bringing further extortion pressure to bear, to intimidate, for the purpose of holding the money cow trust hostage for attorney fee ransoms, for the purpose of avoiding summary judgment hearings thus preventing evidence of the racketeering conspiracy from reaching the public record, for the purpose of diverting the discussion away from breach of the ruptured and looted trust agreement to argument over breach of a mediated settlement agreement, all in furtherance of a pattern of racketeering activity affecting interstate and foreign commerce in that:[2]

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[2] Also violations of 18 U.S.C. §242 and 42 U.S.C. §§1983, 1985 and right of claims under §1988 also including in concert aiding and abetting public and private breach of fiduciary and misapplication of fiduciary.

CLAIM 4 - (Honest Services) 18 U.S.C. §1346 and 2

122. On or about September 10, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendants Neal Spielman, Bradley Featherston, Greg Lester, Christine Riddle Butts, Clarinda Comstock, Jill Willard Young, and Toni Biamonte, did unlawfully, willfully and knowingly conspire to alter the course of justice, under color of official right, for the purpose of executing or attempting to execute a scheme and artifice to defraud and deprive, in furtherance of a pattern of racketeering activity affecting interstate and foreign commerce in violation of 18 U.S.C. §1346:

CLAIM 5 - (Honest Services) 18 U.S.C. §1346 and 2;
CLAIM 6 - (Wire Fraud) 18 U.S.C. §1343 and 2;
CLAIM 7 - (Fraud) 18 U.S.C. §1001 and 2;
CLAIM 8 (Theft/ Hobbs Act Extortion) Texas Penal Codes 31.02 & 31.03 and 18 U.S.C. §1951(b)(2) and 2;
CLAIM 9 (Conspiracy to Obstruct Justice) 18 USAC §371;[3]

123. On or about January 14, 2016, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendants Gregory Lester and Jill Willard Young did unlawfully, willfully and knowingly conspire to alter the course of justice for the purpose of executing or attempting to execute a scheme and artifice to defraud and deprive by electronically filing a fictitious report into the Harris County Probate Court No. 4, an enterprise which engages in and the activities of which affect interstate and foreign commerce, as part of the conspiracy entered into on or before September 10, 2015 and in furtherance of a pattern of racketeering activity affecting interstate and foreign commerce in violation of 18 U.S.C. §§371, 1001, 1346, 1343, 1951(b)(2) and 2 – Texas Penal Codes 31.02 and 31.03.

[3] Also violations of 18 U.S.C. §242 and 42 U.S.C. §§1983, 1985 and right of claims under §1988 also including in concert aiding and abetting public and private breach of fiduciary and misapplication of fiduciary.

CLAIM 10 - (Honest Services) 18 U.S.C. §1346 and 2;
CLAIM 11 - (Fraud) 18 U.S.C. §1001 and 2;
CLAIM 12 (Theft) Texas Penal Codes 31.02 & 31.03/ Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2;
CLAIM 13 (Conspiracy) 18 USAC §371 and 2;

124. On or about March 9, 2016, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendants Neal Spielman, Stephen A. Mendel, Gregory Lester, Bobbie Bayless, and Clarinda Comstock did unlawfully conspire to alter the course of justice, under color of official right, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, entered into on or before July 2015, in furtherance of a pattern of racketeering activity affecting interstate and foreign commerce involving violations of 18 U.S.C. §§371, 1001, 1346, 1343, 1951(b)(2) and 2, and 42 U.S.C. §§242, 1983 and 1985 and Texas Penal Codes §§31.02 and 31.03. 32.21.

125. As part of the racketeering conspiracy Defendants, acting in concert, both individually and severally, acted together to promote, conceal, and otherwise protect the purposes of the racketeering activity from possible criminal investigation and prosecution.

CLAIM 14 (Illegal Wiretap) Texas Penal Code 16.02 and 18 U.S.C. §2511 and 2[4]

126. From an unknown date, including but not limited to March and April of 2011, and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendants Anita Brunsting and Amy Brunsting acting individually and in concert with persons both known and unknown to Plaintiff Curtis, conspired to unlawfully,

[4] Texas Penal Code 16.02 and 18 U.S.C. §2511 (§§2510-22) Texas Civil Wire Tap Act found at Tex. Civ. Prac. & Rem. Code, Title 123 as amended by the Electronic Communications Privacy Act (ECPA)(Pub. L. 99-508; 10/21/86) Title III of the Omnibus Crime Control and Safe Streets Act of 1968, (Pub. L. 90-351; 6/19/68), also known as the "Wiretap Act".

willfully and knowingly intercept and did unlawfully intercept, record, possess, conceal, manipulate and selectively disseminate illegal wiretap recordings of private telephone conversations intercepted by use of an electronic recording device attached to the telephone line of Nelva Brunsting, in furtherance of a pattern of racketeering activity affecting interstate and foreign commerce in that:

CLAIM 15 - Dissemination of illegal wiretap Recordings by mail 18 U.S.C. §§1341 and 2

127. On or about July 1, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendants Anita Brunsting and Bradley Featherston, aided and abetted by persons known and unknown to Plaintiffs and aiding and abetting persons known and unknown to Plaintiffs, did unlawfully, willfully and knowingly cause illegal wiretap recordings of private telephone conversations between Carl Brunsting and his wife Drina Brunsting, to be delivered by certified mail to Plaintiff Curtis and the third party attorneys for parties in multiple pending lawsuits, in violation of 18 U.S.C. §2511(1)(c) and Texas Penal Code 16.02. The illegal wiretap recordings selectively disseminated on CD-ROM, are believed to have been made on or about March and April 2011. The CD contained items which were Bates numbered 5814 to 5840. Included among those items were the following four audio recordings:[5]

CLAIM 16 - Illegal Wiretap (Tampering and Manipulation)

(1) a 43 second phone conversation between Carl and his mother which, according to the file properties, was both created and modified on February 27, 2015 (Brunsting 5836.wav);

[5] Excerpted from Carl Brunstings Motion for Protective Order filed July 17, 2015.

CLAIM 17 - Illegal Wiretap (Tampering and Manipulation)

(2) a phone conversation lasting 6 minutes and 44 seconds between Carl and Drina which, according to the file properties, was both created and modified on February 27, 2015 (Brunsting 5837.wav);

CLAIM 18 - Illegal Wiretap (Manipulation)

(3) a telephone conversation lasting 19 minutes and 18 seconds between Carl and Drina which, according to the file properties, was both created and modified on April 22, 2011 (Brunsting 5838.wav); and

CLAIM 19 - illegal wiretap (Manipulation)

(4) a telephone conversation lasting 8 minutes and 53 seconds between Carl and Drina which, according to the file properties, was both created and modified on March 21, 2011 (Brunsting 5839.wav).

CLAIMS 20 and 21 Illegal Wiretap, in Concert Aiding and Abetting: Spoliation, Destruction or Concealing Evidence 18 U.S.C/ §§1512(c) conspiracy 1512(k) & 1519 and 2

128. On July 21, 2015 in the southern district of Texas and elsewhere within the jurisdiction of the Court, Counsel for Anita Brunsting - Bradley Featherston, Counsel for Amy Brunsting - Neal Spielman, and Counsel for Carole Anne Brunsting - Darlene Payne Smith, filed in-concert objections to the application for protective orders filed by Carl Brunsting, and while objecting to the protective order and arguing the recordings contained relevant and admissible evidence, Defendants Bradley Featherston, Neal Spielman, and Darlene Payne Smith simultaneously objected to qualifying the recordings in any way and just like the infamous

8/25/2010 extortion instrument, when confronted with demands for a show of proof they are unwilling to bring forth any evidence, and none of them claim to know anything individually.

129. Implicit in the assertion the recordings were relevant and the content admissible, Defendants claimed to possess personal knowledge that: "(1) the recording device was capable of recording the events offered in evidence; (2) the operator was competent to operate the device; (3) the recording is authentic and correct; (4) changes, additions, or deletions have not been made in the recording; (5) the recording has been preserved in a manner that is shown to the court; (6) the speakers on the tape are identified; and (7) the conversation elicited was made voluntarily and in good faith, without any kind of inducement."

130. Defendants have obtained, possessed, manipulated and disseminated illegal wiretap recordings and are now concealing:

a. The device used

b. The original wiretap media

c. Other wiretap recordings

d. The chain of custody

CLAIM 22 - Conspiracy to Obstruct Justice

131. On or about July 22, 2015 in the southern district of Texas and elsewhere within the jurisdiction of the Court, Defendants Bobbie Bayless, Clarinda Comstock, and Neal Spielman, aided and abetted by persons known and unknown to Plaintiffs and aiding and abetting persons known and unknown to Plaintiffs, did unlawfully, willfully and knowingly combine, conspire and agree with each other to obstruct and conceal evidence and engage in predicate acts including but not limited to 18 U.S.C. §§1512(c) conspiracy 1512(k), 1519 and 18

U.S.C. §§1951(b)(2) and 2, Extortion and Texas Penal Codes §§31.02, 31.03 and 32.21 (theft/extortion) by removing Summary Judgment Motions from Calendar and creating stasis, as part of a conspiracy to deprive Plaintiff Curtis of an impartial forum (18 USC §§242) , access to the Courts (42 U.S.C. §1983) substantive due process, (42 U.S.C. §1985) equal protection, and (Texas Penal Code §§31.02 and 31.03) property rights.[6]

CLAIM 23 – Conspiracy Re: State Law Theft/ Extortion - in Concert Aiding and Abetting

132. From an unknown date and continuing thereafter up to and including July 21, 2015 and continuing thereafter up to and including September 10, 2015 and March 9, 2016 and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendants Neal Spielman, Bradley Featherston, Stephen A. Mendel, Gregory Lester, Christine Riddle Butts, Clarinda Comstock, Jill Willard Young, and Toni Biamonte, together with persons both known and unknown to Plaintiffs, individually and severally, did unlawfully, willfully and knowingly conspire to obstruct, delay and affect, and did attempt to obstruct, delay and affect, commerce as that term is defined in Title 18, United States Code, Section 1951, and the movement of articles and commodities in such commerce, by extortion under color of official right, as that term is defined in Title 18, United States Code, Section 1951(b)(2), in that Defendants conspired to obtain and did attempt to obtain the property of Plaintiff Candace Louise Curtis, endeavoring to obtain consent induced by the wrongful use of actual and threatened force, violence and fear, in that the Defendants did conspire to use a fictional report, a staged mediation, an extortionist thug mediator, acts obstructing and delaying justice, and the forged extortion instrument, to make threats with the intention of instilling fear of economic

[6] 18 U.S.C. §2: In concert aiding and abetting: Public Services Fraud, Breach of Fiduciary, Misapplication of Fiduciary, Concealing evidence of forgery (Texas Penal Code §32.21) and racketeering.

harm in Plaintiff Curtis in furtherance of a pattern of racketeering activity affecting interstate and foreign commerce.

CLAIM 24 - State Law Theft/ Hobbs Act Extortion 18 U.S.C. 1951(b)(2) and 2

133. On or about August 25, 2010, and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendants Candace Freed and Anita Brunsting did unlawfully, knowingly and intentionally further a conspiracy to obstruct, delay and affect, and did attempt to obstruct, delay and affect commerce, and the movement of articles and commodities in such commerce, by extortion under color of official right, as that term is defined in Texas Penal Codes 31.02 and 31.03 and Title 18, United States Code, Section 1951, in that Defendant Candace Freed, with persons both known and unknown to Plaintiffs, did conspire to obtain improper dominion over the assets of the Brunsting family of trusts and the expected property of Plaintiff Curtis, by collaborating to obtain consent induced by the wrongful use of threatened force, violence and fear, in that Defendant Candace Freed did implement the Vacek design in drafting the heinous 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (hereinafter the "8/25/2010 QBD" or "Extortion Instrument"). Such instrument was, in fact, used to make threats and to instill fear of economic harm in the victims of the inheritance theft conspiracy, for which the extortion instrument was created, along with other intended illicit purposes as hereinafter more fully appears.

CLAIM 25 - State Law Theft/Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2
CLAIM 26 – Wire Fraud 18 U.S.C. §§1343

134. On or about October 23, 2010, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Anita Brunsting knowingly and intentionally

furthered the extortion conspiracy by emailing the extortion instrument (8/25/2010 QBD) to Plaintiff Curtis, along with trust instruments, in violation of 18 U.S.C. §§1343 and 1951.

CLAIM 27 - State Law Theft/Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2
CLAIM 28 – Mail Fraud 18 U.S.C. §§1341

135. On or about June 4, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Anita Brunsting knowingly and intentionally furthered the extortion conspiracy in her response to Plaintiff Curtis' first interrogatories. At item number 15 page 6, Anita uses the heinous extortion instrument to threaten Carl and Candace, both of whom are victims of Anita's felony thefts in violation of 18 U.S.C. §§1951.

136. Defendants Anita Brunsting and Bradley Featherston placed the June 4, 2015 response to interrogatories containing extortion threats for delivery with the U.S. Postal Service in violation of 18 U.S.C. §1341.

CLAIM 29 - State Law Theft/Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2
CLAIM 30 – Wire Fraud 18 U.S.C. §§1341

137. On or about February 18, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Amy Brunsting knowingly and intentionally furthered the extortion conspiracy in her response to Plaintiff Curtis' second application for distribution. On page 7, Amy Brunsting and her Counsel Neal Spielman advance threats using the heinous extortion instrument in violation of 18 U.S.C. §1951(b)(2) and 2, knowing full well that it is not a legitimate instrument by any measure.

138. Defendants Amy Brunsting and Neal Spielman placed the June 4, 2015 response to interrogatories containing extortion threats for delivery with the U.S. Postal Service in violation of 18 U.S.C. §1341, 1951(b)(2) and 2.

CLAIM 31 - State Law Theft/Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2
CLAIM 32 – Mail Fraud 18 U.S.C. §§1341

139. On or about June 25, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Amy Brunsting and her Counsel, Defendant Neal Spielman unlawfully, willfully and knowingly advanced threats using the heinous extortion instrument in Amy's response to Plaintiff Curtis' Request for Production, delivered USPS in violation of 18 USC §§1341, 1951.

CLAIM 33 - State Law Theft/Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2
CLAIM 34 – Mail Fraud 18 U.S.C. §§1341

140. On or about December 5, 2014, Defendant Anita Brunsting through her Counsel, Defendant Bradley Featherston, advanced and furthered the extortion conspiracy when Featherston filed Anita's objection to Carl Brunsting and Plaintiff Curtis' applications for distribution. In section F on page 6 Anita uses the extortion instrument to allege that both theft victims Carl and Candace had violated the in terrorem clause in the extortion instrument by defending their beneficial interests, in violation of 18 U.S.C. §1951 and 1341.

> *"4. If the Court finds the in terrorem clause is enforceable, then Candace and Carl have no right to any distribution from the trust".*

CLAIM 35 - State Law Theft/Hobbs Act Extortion 18 U.S.C. §1951(b)(2) and 2
CLAIM 36 - Mail Fraud 18 U.S.C. §1341

141. On or about June 4, 2015 in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Anita Brunsting, in response to Plaintiff Curtis' first interrogatories, at item number 15 page 6, again used the heinous extortion instrument to threaten Carl and Candace, both of whom are victims of Anita's first degree felony thefts, delivered USPS in violation of 18 USC §§1341 and 1951.

CLAIM 37 – Tampering with Federal Judicial Proceeding by False Affidavit 18 U.S.C. §371, 1621 and 2

142. On March 6, 2012, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendants Amy Brunsting and Bernard Lyle Mathews III, aided and abetted by others unknown to Plaintiff and aiding and abetting others unknown to Plaintiff, did corruptly, unlawfully, knowingly, and willfully obstruct, influence, and impede an official proceeding, and did attempt to do so, that proceeding being Candace Louise Curtis v. Anita Brunsting et al., No. 4:12-CV-00592 the United States District Court for the Southern District of Texas, Houston Division, by filing a false affidavit In violation of Title 18, United States Code, Sections 1001, 1512(c)(2), 1623, and 18 U.S.C. §402 and F.R.C.P. Rule 11(b).

CLAIM 38 - Spoliation, Destruction or Concealing Evidence 18 U.S.C. §§1512(c) Conspiracy 1512(k) and 1519 and 2

143. On or about September 10, 2015 and continuing thereafter, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Toni Biamonte as an official court reporter did unlawfully, knowingly and willfully spoliate, destroy or otherwise conceal material evidence of a racketeering conspiracy in violation of 18 U.S.C. §§1512(c) conspiracy 1512(k) and 1519, aiding and abetting the racketeering conspiracy and is, thus, a principal in acts in furtherance of the aforementioned and described conspiracy to violate 18 U.S.C. §1962(c) in violation of 18 U.S.C. §1962(d).

CLAIM 39 - Forgery on Internal Revenue forms 18 U.S.C. §§287, 371, and 1001 and 2

144. On or about June 7, 2011, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Anita Brunsting, for the purpose of executing or attempting to execute a scheme and artifice to defraud and deprive did unlawfully, knowingly

and willfully apply the Social Security Number, the record identifier used to ensure proper payment of benefits in both the Title II and Title XVI programs, and did forge the signature of Plaintiff Curtis on stock transfer forms, to facilitate the improper transfer of securities by Computershare, an investment services corporation.

CLAIM 40(a-d) - Forgery & False Instruments, Aiding and Abetting Theft, Banking, Wire, Mail and Securities Fraud (Texas Penal Codes 31.02 & 31.03 & 18 U.S.C. §§1001 and 2)

Conspiracy to commit securities, mail, wire and banking fraud,

a. False Instruments used to trade in Securities 18 USC §§1348/1349 – Securities Fraud, 15 U.S.C. §78aa and 15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the right of claims implied therefrom. (fraudulent trading in securities is civilly and criminally actionable but are not predicate acts)

b. False Instruments used to commit Banking Fraud 18 U.S.C. §1344

c. False Instruments used to commit Sections 18 U.S.C. §§1341, 1343 and 1346 (Property Mail and Wire Fraud)

d. False Instruments used to commit 18 U.S.C. §1951 Hobbs Act Extortion

145. From an unknown date, known to be before July 1, 2008, and continuing thereafter up to and including August 25, 2010 and continuing thereafter up to and including December 21, 2010 and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Candace Kuntz-Freed drafted false instruments, undermining the trust instrument products and estate plan services marketed by Vacek & Freed

PLLC, to facilitate the theft of trust assets by Anita Brunsting, as part of a racketeering conspiracy in that:

146. Anita Brunsting used the illicit July 1, 2008 Appointment of Successor Trustees drafted by Candace Freed to commit acts complained of herein.

147. Anita Brunsting used the illicit August 25, 2010 appointment of successor co-trustees to commit acts complained of herein.

148. Anita Brunsting used the illicit December 21, 2010 appointment of successor trustee to commit acts complained of herein.

149. Freed drafted the illicit 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (The Extortion Instrument) in concert with Anita Brunsting, and not at the behest of her client Nelva Brunsting.

150. Anita Brunsting used the illicit 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (The Extortion Instrument), in concert with others known and unknown to Plaintiff, to commit the acts of theft and extortion complained of herein.

151. Plaintiff Curtis was damaged in her property rights by Anita Brunsting's improper use of the illicit instruments drafted by Candace Freed.

CLAIM 41 - Misapplication of fiduciary in excess of $300,000.00 Texas Penal Code Thefts §§31.02, 31.03, 32.45 (against elderly person Tex. Pen. Cd. 32.45(d))
CLAIMS 42(a–q) Wire, Mail, and Banking Fraud 18 USC §§1341, 1343, 1344 and 2

152. From an unknown date, known to be on or before December 21, 2010 and continuing thereafter, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Anita Brunsting, aided and abetted by persons known and unknown to

Plaintiff and aiding and abetting persons known and unknown to Plaintiff, did unlawfully, willfully and knowingly, misapply fiduciary assets in excess of $300,000 (Texas Penal Code theft §§32.45, 31.02, 31.03) in that:

153. Defendant Anita Brunsting paid her personal credit card debts and made other improper transfers from a trust bank account, in violation of provisions of the family trust, the common law and the Texas trust code. These comingling and misapplication transactions were perfected by electronic funds transfer and the use of the mails.[7]

IX. Non-Predicate Act Civil Claims for Damages

CLAIMS 43 (a-j) Section 27 of the Exchange Act (15 U.S.C. §78aa) and Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5)

154. From an unknown date, believed to be on or before December 21, 2010, and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, Defendant Anita Brunsting did unlawfully, willfully and knowingly misapply fiduciary assets in excess of $300,000 (Texas Penal Code theft §§32.45, 31.02, 31.03). Many of the transactions involved Electronic Funds Transfers and others involved the use of the mails. Many transactions also involved banking and/or securities fraud 18 USC §§1341, 1343, 1344 and 2 and Section 27 of the Exchange Act (15 U.S.C. §78aa) and Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) in that:

155. May 11, 2011, using the illicit instruments drafted by Defendant Candace Freed, Defendant Anita Brunsting, acting trustee de son tort, unlawfully, knowingly and willfully

[7] Please see Appendix A attached hereto for a chart of events, dates, transactions and mediums employed. (Securities fraud is not considered a Predicate Act and the securities theft transactions are herein pled in the alternative as misapplications of fiduciary involving wire, mail and banking fraud)

misappropriated and misapplied fiduciary assets by improperly transferring 1120 Shares of Exxon and Chevron securities valued at $90,854.00 in violation of 18 U.S.C. §1343 (Wire Fraud) and Section 27 of the Exchange Act (15 U.S.C. §78aa) and Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5)

156. June 15, 2011 using the illicit instruments drafted by Defendant Candace Freed, Defendant Anita Brunsting, acting trustee de son tort, unlawfully, knowingly and willfully misappropriated and misapplied fiduciary assets by improperly transferring 2320 shares of Exxon and Chevron securities valued at $208,122.80 in violation of 18 U.S.C. §1343 (Wire Fraud) and Section 27 of the Exchange Act (15 U.S.C. §78aa) and Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

157. Between April 20, 2012 and April 2, 2013 using the illicit instruments drafted by Defendant Candace Freed, Defendants Anita Brunsting, and Amy Brunsting, acting trustees de son tort, unlawfully, knowingly and willfully misappropriated and misapplied fiduciary assets in excess of $38,000 by paying personal legal liabilities with trust funds from a trust bank account in violation of 18 U.S.C. §1344 (Banking Fraud) and 18 U.S.C. §1343 (Wire Fraud) and §2 (aiding and abetting).[8]

158. Plaintiff Curtis, as a beneficiary and the de jure trustee for the Brunsting trusts, has fiduciary duties interfered with and prevented by the racketeering activity, has beneficial

[8] Please see appendix A attached here to for a chart of event dates, transactions and mediums employed

property interests in the assets so misapplied and has suffered tangible injury to business and property as a direct and proximate result of all the tortious acts herein claimed.

CLAIM 44 - Conspiracy to violate 18 USC §§242 and 2, & 42 U.S.C. §§1983 and 1985

159. From an unknown date and continuing thereafter in the Southern District of Texas and elsewhere within the jurisdiction of the Court, each of the Defendants herein named, individually and severally, aided and abetted by persons known and unknown to Plaintiff and aiding and abetting persons known and unknown to Plaintiff, did unlawfully, willfully and knowingly conspire together to participate, and did participate, in a scheme or artifice to deprive Plaintiff Curtis of rights, privileges, and immunities secured and protected by the Constitution and laws of the United States, under color of law and color of official right, statute, ordinance, regulation, custom and policy, in violation of 18 USC §§242 and 2, and 42 U.S.C. §§1983 and 1985.

CLAIM 45 - Aiding and Abetting Breach of Fiduciary, Defalcation and Scienter

160. The RICO Defendants understood that Anita and Amy Brunsting owed fiduciary duties to Plaintiff Curtis and that the acts and omissions of Anita and Amy Brunsting were torts and breaches of those duties, and the RICO Defendants aided and abetted Anita and Amy Brunsting's torts and breaches in pursuit of their own unjust self-enrichment anyway.

161. As an actual consequence and proximate result Plaintiff Curtis has been injured in her business and property and is entitled to damages from all Defendants as joint tortfeasers, for in-concert aiding and abetting breach of fiduciary both before and after the fact, in an exact amount to be proven at trial.

162. Plaintiff is entitled to damages from all Defendants as joint tortfeasers, for in-concert aiding and abetting breach of fiduciary both before and after the fact.

CLAIM 46 - Aiding and Abetting Misapplication of Fiduciary, Defalcation and Scienter

163. The RICO Defendants understood that Anita and Amy Brunsting owed fiduciary duties to Plaintiff Curtis and that Anita and Amy Brunsting had misapplied fiduciary in excess of $300,000 and that Plaintiff Curtis had an inheritance expectancy interest in those assets. The RICO Defendants aided and abetted Anita and Amy Brunsting's continued misapplications of fiduciary anyway.

164. As an actual consequence and proximate result Plaintiff Curtis has been injured in her business and property and is entitled to damages from all Defendants as joint tortfeasers, for in-concert aiding and abetting misapplications of fiduciary both before and after the fact, in an exact amount to be proven at trial.

CLAIM 47 - Tortious Interference with Inheritance Expectancy

165. The RICO Defendants understood that Plaintiff Curtis had an expectancy of an inheritance right. The RICO Defendants intentionally interfered with Plaintiff Curtis' expectancy. The interference was through acts of fraud and duress and the interference was, thus, tortious.

166. As an actual consequence and proximate result, Plaintiff Curtis has been injured in her business and property and is entitled to damages from all Defendants as joint tortfeasers, for in-concert aiding and abetting tortious interference with Plaintiff Curtis' inheritance expectancy, both before and after the fact, in an exact amount to be proven at trial.

IX. Continuity

167. The law and economics of development focuses its attention on the effects that well-functioning legal and judicial systems have on economic efficiency in the development of nations. As studies have shown, a factor that has greatly retarded commerce in developing nations is the imperfection of the law and the uncertainty in its application. Entrenched corrupt practices within the public sector (i.e., official systemic corruption) hamper the clear definition and enforcement of laws, and therefore commerce is impeded.

168. Systemic corruption within the public sector can be defined as the systematic use of public office for private benefit that results in a reduction in the quality or availability of public goods and services (Buscaglia 1997a). In these cases, corruption is systemic when a government agency only supplies a public good or service if an otherwise unwilling transfer of wealth takes place from an individual or firm to the public sector through bribery, extortion, fraud, or embezzlement.[9]

169. Widespread corruption is a symptom that the state is functioning poorly. In fact, the entrenched characteristic of official corrupt practices is rooted in the abuse of market or organizational power by public sector officials. Many studies have already shown that the presence of perceived corruption retards economic growth, lowers investment, decreases private savings, and hampers political stability. Moreover, foreign direct investment has demonstrated a special negative reaction to the presence of corruption within the public sectors in developing countries showing that the degree of corruption in importing developing countries also affects the trade structure of exporting countries.

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[9] Although published in a 1999 the Hoover Institute Article written by Eduardo Buscaglia describes the Harris County Probate Court racketeering enterprise operations with this statement and is on all fours with the facts of the case in point.

170. The multi-billion dollar Probate industry is an illicit wealth redistribution empire run by morally bankrupt judges and attorneys, supported by an army of tax-dollar fed "judicial administrators," and social workers that George Orwell would marvel at.

171. Harris County Probate Court has become the enterprise out of which public corruption operates an institutionalized theft cartel, involved in redistributing the assets of our elderly, and most vulnerable citizens, amongst a cabal of corrupt judges, lawyers and "board certified professionals".

172. The very people who occupy offices of public trust charged with the preservation of public justice, with the advent of absolute judicial impunity from civil claims, have become the worst organized cartel of predatory criminals in the history of this nation. Genovese, Luciano, Bonanno, Gambino, Lucchese, Capone, Cohen, Nitty, and the Krays would be drooling with envy and admiration, as they could never have built such an invasive and successful criminal empire in the private sector.

173. Judicial Corruption Enterprise activities involve kidnap, carjack, assault, murder, armed robbery, extortion, false arrest, malicious prosecution, denial of due process and false imprisonment, amounting to color of law human trafficking and domestic terrorism. The root cause for all of this institutionalized organized criminal and terrorist activity can be traced to more than one scheme to defraud, but those schemes are but variations on a limited number of known artifices.

174. Amongst the main culprits is the perversion and expansion of the 17th Century English common law doctrine of limited judicial immunity, into a doctrine of absolute criminal impunity where public corruption flourishes because there are no deterrent consequences.

175. Once having crossed the solid demarcation between right and wrong, the line begins to grey until, one day, it becomes completely invisible.

176. The notion that these people can operate with criminal impunity has led to an environment where the appearance of legitimacy is no longer of any real importance and the displays of criminal intent have become more than blatant. It has become a trade practice in the state Courts of this nation.

177. Plaintiff Curtis is one of those victims, as were Elmer and Nelva Brunsting, Carl Brunsting, Willie Jo Mills, Ruby Peterson, Helen Hale, Olga De Francesca, Doris Conte and countless others both known and unknown to Plaintiffs.[10] The Estate of Nelva Brunsting, the Brunsting Trusts and the Brunsting heirs and trust beneficiaries were among the victims.

X. Jurisdiction over Conduct Affecting Interstate Commerce

178. All federal crimes are treated as commercial[11]. Pursuant to Article 1, Section 8, Clause 3 of the federal Constitution, the United States Congress has exclusive jurisdiction over commerce amongst the states (the Commerce Clause).

179. Article VI, Section 2, of the U.S. Constitution is known as the Supremacy Clause because it provides that the "Constitution, and the Laws of the United States … shall be the supreme Law of the Land." It means that the federal government, in exercising any of the powers enumerated in the Constitution, must prevail over any conflicting or inconsistent state exercise of power.

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[10] These names are well known to anyone who ever heard the phrase "Probate Mafia" and bothered to do a google type search to find out what is meant by the phrase.

[11] 27 C.F.R. 72.11

180. The RICO statutes were designed by Congress to combat organized crime in both the public and the private sectors and specifically provides a civil right of claims for injuries to business or property as a result of a pattern of activity involving two (2) or more of the listed predicate acts. That criterion has been satisfied as herein delineated.

XI. Affirmative Pleading on Doctrines of Immunity

181. Fraus Omnia Vitiat.

182. There is no judicial immunity to civil liability for non-judicial acts, anti-judicial acts or RICO Predicate Acts forming a pattern of racketeering activity, as none of these types of conduct can be said to be judicial functions even when disguised as such.

183. Article III, Section 1 of the Constitution for the United States of America, specifically creates the U.S. Supreme Court and gives Congress the authority to create the lower federal courts. Congress used this power to establish 13 U.S. Courts of Appeals, 94 U.S. District Courts, the U.S. Court of Claims, and the U.S. Court of International Trade.

184. The U.S. Supreme Court is the only court of general jurisdiction in the federal system, all other federal courts are courts of limited jurisdiction created and empowered by Congressional statute.

185. Chief Justice Marshall, writing for the Court in Cohens, 19 U.S. at 404 observed:

> *It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot, "Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds."*

186. The list of predicate acts specifically enumerated at 18 U.S.C. §1961(1) includes §§371, 1346 and 1951 each of which requires a public corruption/color of law element.

187. To argue that a judge is immune from a public corruption statute if acting within the four walls of a court room and exempt if not acting in his public capacity is a very precise statement that judges are above the law and that the victims of public corruption related deprivations of rights have no remedy and, thus, no rights.

188. 42 U.S.C. §1983 clearly states an exception to actions brought against judicial officers. That one exception provides pre-requisites to injunctive relief in actions brought against judicial officers. To conclude that Congress did not intend a private right of claims against judges under §1983 is to render the language of the statute superfluous, which the rules governing statutory construction will not allow.

42 U.S.C. §1983 Civil Action for Deprivation of Civil Rights (emphasis added)

> *Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,* ***except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.*** *For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.*
>
> *(R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)*

189. There is no privity defense, no attorney immunity defense and no judicial immunity exception to the federal Racketeer Influenced Corrupt Organization statutes. The

language of the Act differentiates between criminal and civil liability and explicitly provides private parties with civil remedy for injuries to property and business caused by a pattern of racketeering activity involving two (2) or more of the predicate acts defined at 18 USC §1961(1). The RICO Act provides for criminal penalties in Section 1963 and provides private litigants with civil remedy in section 1964(c).

190. Several predicate act statutes, mostly codified in Title 18 of the United States Code, provide for federal prosecution of public corruption. Among these are the Hobbs Act (18 USC §1951), the mail and wire fraud statutes (18 USC §§1341 & 1343), the honest services fraud provision (18 USC §1346), the Travel Act (18 USC §1952), the federal official bribery and gratuity statute, (18 U.S.C. § 201 enacted 1962), the Foreign Corrupt Practices Act (FCPA) (enacted 1977), the federal program bribery statute, 18 U.S.C. § 666 (enacted 1984) and the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 USC §§1961-1968 enacted in 1970). Each statute directly addresses public corruption and most of these are specifically identified as RICO predicate acts at 18 U.S.C. 1961(1).

191. The recent plea bargain and sentencing of Texas State 404th District Court Judge Abel Limas to six years in federal prison for violating 18 U.S.C. §§1343 (Honest Services Wire Fraud), §1346 (Honest Services Fraud) and §1951 and 2 (Hobbs Act Extortion), clearly verifies that these public corruption statutes apply to judges by operation of the RICO statutes[12].

192. According to the Indictment, Limas accepted paltry sums as bribes, in return for ad litem appointments and other favorable judicial treatments. Counts 1-8 were that Limas:

[12] Case 1:11-cr-00296 Filed in TXSD on 03/29/11

a. Accepted $600 for the continuation and subsequent termination of a probation revocation proceeding in violation of Texas Penal Code 36.02(a)(2) (bribery).

b. Accepted $700 in exchange for changing the terms of a criminal defendant's appearance bond in violation of Title 18 United States code sections 1951 and 2.

c. Accepted $1,500 for changing the terms of a criminal defendant's conditions of probation to permit the defendant to report by mail rather than in person in violation of Texas Penal Code section 36.02(a)(2) (bribery).

d. Accepted $1,800 in a scheme or artifice to defraud in violation of title 18, United States Code, sections 1343 and 1346.

e. Accepted $8,000 for favorable judicial rulings on motions, case transfers, and other matters in civil cases for the benefit of participating attorneys in violation of Title 18, United States code, section 1951 and 2, and in violation of Texas Penal Code section 36.02(a)(2) (bribery).

f. Accepted $4,500 for an ad litem appointment in a civil case in violation of Texas Penal Code section 36.02(a)(2) (bribery).

g. Accepted $5,000 for denial of a motion for sanctions and other judicial acts in violation of Title 18 United States Code sections 1951 and 2, and in violation of Texas Penal Code section 36.02(a)(2).

h. Accepted $2,000 for the modification of the terms of probation and dismissal of charges against a criminal defendant in violation of Title 18 United States Code sections 1951 and 2, and in violation of Texas Penal Code section 36.02(a)(2).

17-20360.66

193. This cancerous judicial black market plague has spread like wildfire throughout the state court systems whether family law court, juvenile, traffic, probate or any other municipal level judicial arena on the state wide level. They have all become criminal racketeering enterprises and the root cause for each of these obscenities is "impunity" by any other name.

194. The cases of convicted Judge Abel Limas (6 years), convicted attorney Marc Rosenthal (26 years) and convicted Texas State Senator Jim Solis (47 months) are not isolated specific instances of public corruption, but limited examples of a national public corruption pandemic. Congress, in drafting the RICO statutes, determined public prosecutorial resources were insufficient to address this problem and specifically provided for private civil remedy.

195. Imposition of an enlarged version of the judicially created English common law doctrine of limited Judicial Immunity to foreclose private claims for civil remedy against judges under the RICO and civil rights statutes, has nurtured a contagion of public corruption throughout all three branches of government, is in direct opposition to the clearly expressed intentions of Congress in providing such remedy, is a violation of the separation of powers doctrine and, as the learned Chief Justice Marshall expressed, "*treason to the constitution*".

196. Article I Section 8 Clause 3 of the federal Constitution grants exclusive jurisdiction over interstate and foreign commerce to Congress. Given that all federal crimes are commercial the nexus with interstate commerce is inarguable and the notion that state court judges are absolutely immune from 42 U.S.C. §1983 or 18 U.S.C. §1964(c) actions ignores the very clear language of those sections and violates the supremacy clause.

XII. Aiding and Abetting, Fraud, and the Texas Attorney Immunity Doctrine

197. "Attorney Immunity" is a vague expression. Any civil immunity an attorney has is strictly limited to the litigation context and does not include actively engaging in an organized criminal color of law enterprise involving RICO predicate act conduct.

198. The RICO Defendant attorneys understood that the conduct of their clients was tortious and criminal and the lawyers helped the clients with the conduct thinking only to stuff their own pockets, showing no regard for ethics or law.

199. Conduct sufficient to state a claim of a racketeering conspiracy including predicate acts of extortion §1951, Obstruction §371, Honest Services §1346, Impartial Forum §242, Illegal Wiretap §2511, Mail Fraud §1341, Wire Fraud §1343, Banking Fraud §1344 and Securities Fraud 15 U.S.C. 78 et seq., is not within the scope of legal representation and cannot be excused as part of the attorney's discharge of his duties to his client, even when masqueraded under the litigation umbrella. (The Litigation Privilege)

200. Acts constituting knowing substantial assistance, sufficient to state a claim for in-concert aiding and abetting RICO predicate act crimes, torts and breaches of fiduciary committed by the client, are sufficient to establish in-concert liability of the attorney. There are no exceptions.

201. In reading the text and legislative history of the RICO act, the Fifth Circuit has interpreted that Congress intended the act to strike at criminal conduct characterized by at least two consequential dimensions. The offenses must be of a degree sufficiently serious not only to inflict injury upon its immediate private victims, but also to cause harm to significant public processes or institutions, or otherwise pose threats to larger societal interests worthy of the severe punitive and deterrent purposes embodied in the statute.

202. These aims and structure are somewhat akin to those reflected in the Clayton Act, 15 U.S.C. §15, after which RICO civil remedies were patterned.

203. Both statutes bring to bear the pressure of "private attorneys general" on a serious national problem for which public prosecutorial resources are deemed "inadequate"; see also

Sedima, 473 U.S. at 489; Genty v. Resolution Trust Co., 937 F.2d 899, 912 (3d Cir. 1991) ("Congress obviously had much more in mind than merely providing compensation for individual RICO victims when it authorized RICO civil actions. Indeed, the harm of racketeering is dispersed among the public at large, including draining resources from the economy, subverting the democratic process and undermining the general welfare.")

204. This construction accords with the legislative intent of RICO. As explained by the Supreme Court, the purpose of the Act was to address a problem which Congress perceived "was of national dimensions." Turkette, 452 U.S. at 586. Specifically, in the Statement of Findings and Purpose of the Organized Crime Control Act of 1970, Title IX of which encompassed RICO, Congress declared that the activities of organized crime that prompted the legislation "weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commence, threaten the domestic security, and undermine the general welfare of the Nation and its citizens." Statement of Findings and Purpose, Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (1970).

205. Congress did not distinguish between public and private Organized Crime. Public corruption and criminal abuse of the state judicial office has become the number one threat to the security of the people of this nation. The creation of the RICO act as exemplified by the "Statement of Findings and Purpose" and the inclusion of public corruption requisite statutes among the list of predicate acts at 18 U.S.C. §1961(1) clearly indicates a congressional intention to curb public corruption and abuse of the doctrines of immunity, by a dishonest self-protection criminal racketeering industry.

206. The protection for criminal conduct in Texas has also been expanded to include wrongful conduct by attorneys under the Texas Attorney Immunity Doctrine, which has also led to the corruption and criminal takeover of our state judicial institutions.

207. Congress never intended to immunize state-court judges from federal civil rights suits nor from federal Racketeering suits and a doctrine of judicial immunity implemented by the judiciary to protect a corrupt judiciary from legislation designed to protect the public interest from corruption violates the Separation of Powers Doctrine and undermines the public's confidence in the legitimacy of the government of this Nation.

XIII. Affirmative Pleading on Conspiracy and Statutes of Limitations

208. Before the Court are allegations of public corruption involving a conspiracy to deprive the People of Texas and others of the honest services of elected public officers. The conduct complained of is only a small part of a complex multi-layered, multi-faceted criminal industry run by state court judges, who act with impunity with the full collusion, cooperation and participation of attorneys, court appointed administrators, social workers and others.

209. Federal conspiracy laws rest on the belief that criminal schemes are equally, or even more reprehensible than are the substantive offenses to which they are devoted. The Supreme Court has explained that a "collective criminal agreement—[a] partnership in crime—presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that the individuals involved will depart from their path of criminality."[13] Moreover,

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[13] Zacarias Moussaoui was convicted of conspiring to commit the terrorist attacks that occurred on September 11, 2001, United States v. Moussaoui, 591 F.3d 263, 266 (4th Cir. 2010); Wadih El-Hage was convicted of conspiring to bomb the U.S. embassies in Kenya and Tanzania, In re Terrorist Bombings, 552 F.3d 93, 107 (2d Cir. 2008).

Members of an Atlanta street gang were convicted of conspiring to engage in drug trafficking, among other offenses, United States v. Flores, 572 F.3d 1254, 1258 (11th Cir. 2009); motorcycle gang members were convicted of conspiracy to traffic in drugs, United States v. Deitz, 577 F.3d 672, 675-76 (6th Cir. 2009).

observed the Court, "[g]roup association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked." Finally, "[c]ombination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed." In sum, "the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise."

210. Conspiracies and acts in furtherance are considered a single continuing act for limitations purposes. The equitable doctrines of tolling and estopple apply to these claims.

XIV. Affirmative Pleading on Public Corruption

211. Public corruption involves a breach of public trust and/or abuse of position by federal, state, or local officials and their private sector accomplices. By broad definition, a government official, whether elected, appointed or hired, may violate federal law when he/she asks, demands, solicits, accepts, or agrees to receive anything of value in return for being influenced in the performance of their official duties.

212. Public corruption poses a fundamental threat to our national security and way of life. It impacts everything from how well our borders are secured and our neighborhoods protected…to verdicts handed down in courts…to the quality of our roads, schools, and other

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Dominick Pizzponia was convicted on racketeering conspiracy charges in connection with the activities of the "Gambino organized crime family of La Cosa Nostra," United States v. Pizzonia, 577 F.3d 455, 459 (2d Cir. 2009); Michael Yannotti was also convicted on racketeering conspiracy in connection with activities of the "Gambino Crime Family," United States v. Yannotti, 541 F.3d 112, 115-16 (2d Cir. 2008).

Jeffrey Skilling, a former Enron Corporation executive, was convicted of conspiracy to commit securities fraud and mail fraud, United States v. Skilling, 554 F.3d 529, 534 (5th Cir. 2009); Bernard Ebbers, a former WorldCom, Inc. executive, was likewise convicted of conspiracy to commit securities fraud, United States v. Ebbers, 458 F.3d 110, 112 (2d Cir. 2006)

government services. And it takes a significant toll on our pocketbooks, wasting billions in tax dollars every year.[14]

XV. DAMAGES

213. Plaintiff Curtis is one of five beneficiaries of the Brunsting Family of Trusts, who has been deprived of the enjoyment of her beneficial interests, forced to incur expenses and fees in effort to obtain the use of her property, and has suffered extortionist threats of injury to property rights and has suffered fraud upon both state and federal courts committed by corrupt court officers in furtherance of a pattern of racketeering activity herein delineated with a particularity.

214. As an actual consequence and proximate result Plaintiff Curtis has been injured in her business and property in an exact amount to be proven at trial.

215. Plaintiff Munson is a multi-disciplinarian with skills that include but are not limited to information systems engineering and paralegal, among several other skilled crafts. Munson has worked diligently as a paralegal on the Curtis v Brunsting lawsuit for more than four years, in effort to obtain justice for Ms. Curtis, only to be frustrated by a blatantly corrupt probate court and its officers herein named.

216. As an actual consequence and proximate result of the racketeering conspiracy and the obstruction, intentional delay, refusal to administer justice and other means and methods employed, Plaintiff Munson has been diverted away from other productive pursuits and has thus suffered tangible losses to his property and business interests in an amount to be proven at trial.

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[14] https://www.fbi.gov/about-us/investigate/corruption

XVI. Prayers for Relief

217. Plaintiffs incorporate by reference herein all allegations set forth above, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth below.

WHEREFORE, Plaintiff prays for judgment against Defendants, each and every one of them, for the following:

I. An award of compensatory, punitive, exemplary, and enhanced damages in an amount sufficient to make Plaintiffs whole and to deter such future conduct by these Defendants, others of their kind and those who may be so disposed in future;

II. For prejudgment and post judgment interest thereon at the maximum legal rate according to proof at trial;

III. An award of reasonable costs and expenses incurred in this action, including counsel fees and expert fees as allowable under the Title 15, 18, 28, and 42 sections asserted;

IV. An award of treble damages consistent with 18 U.S.C. §1964(c);

V. Such other legal and equitable relief as the Court may deem Plaintiffs entitled to receive, including a referral of the acts found to be unethical or unlawful herein to appropriate authorities.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Plaintiff Candace Louise Curtis respectfully signs this complaint under penalty of perjury pursuant to the laws of the United States and declares that it is consistent with the Federal Rules requirement for candor.

Respectfully submitted,

7/2/2016

CANDACE L. CURTIS Date
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

Plaintiff Rik Wayne Munson respectfully signs this complaint under penalty of perjury pursuant to the laws of the United States and declares that it is consistent with the Federal Rules requirement for candor.

Respectfully submitted,

7/2/2016

RIK WAYNE MUNSON Date
218 Landana Street
American Canyon, CA 94503
(925) 349-8348
blowintough@att.net

Appendix A

APPENDIX A

Misapplication of Fiduciary Wire and Banking Fraud Selected Violations of 18 USC §§1343 & 1344

From	To	Date	Format	Purpose
Anita Brunsting	Anita Brunsting	5/27/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $461
Anita Brunsting	Anita Brunsting	6/6/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $2358.75
Anita Brunsting	Anita Brunsting	6/27/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $2364.34
Anita Brunsting	Anita Brunsting	7/6/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $2976.35
Anita Brunsting	Anita Brunsting	7/15/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $7242.83
Anita Brunsting	Anita Brunsting	7/18/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $1998.19
Anita Brunsting	Anita Brunsting	9/6/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $999
Anita Brunsting	Anita Brunsting	9/23/2011	EFT 18 USC 18 USC §§1343, 1344	Misapplication of Fiduciary $4767.00
Anita Brunsting	Anita Brunsting	10/4/2011	EFT 18 USC 18 USC §§1343, 1344	Misapplication of Fiduciary $2930.00
Anita Brunsting	Anita Brunsting	10/19/2011	EFT 18 USC 18 USC §§1343, 1344	Misapplication of Fiduciary $2033.00
Anita Brunsting	Anita Brunsting	11/3/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $102.52
Anita Brunsting	Anita Brunsting	11/7/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $10,000
Anita Brunsting	Amy Brunsting	11/7/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $10,000
Anita Brunsting	Anita Brunsting	11/8/2011	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $3224.51
Anita Brunsting	Anita Brunsting	3/13/2012	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $10,000
Anita Brunsting	Amy Brunsting	3/13/2012	EFT 18 USC §§1343, 1344	Misapplication of Fiduciary $10,000
Anita Brunsting	Anita Brunsting	5/25/2012	EFT 18 USC §§ 1343, 1344	Misapplication of Fiduciary $5000

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JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Candace Louise Curtis and Rik Munson

(b) County of Residence of First Listed Plaintiff Napa
(EXCEPT IN U.S. PLAINTIFF CASES)

United States Courts
Southern District of Texas
FILED
JUL 05 2016
David J. Bradley, Clerk of Court

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Pro se
218 Landana St.
American Canyon, CA 94503

DEFENDANTS

County of Residence of First Listed Defendant HARRIS
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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- ☐ 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
18 U.S.C. §1964(c), 42, U.S.C. §§1983, 1985, 1988(a), (b) & (c)

Brief description of cause:
Conspiracy to deprive and defraud 18 U.S.C. §§1346, 1951(b)(2) and 2 etc.,

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Kenneth Hoyt DOCKET NUMBER 4:12-CV-00592

DATE
07/02/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

17-20360.80

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

United States Courts
Southern District of Texas
FILED
JUL 05 2016
David J. Bradley, Clerk of Court

July 2, 2016

David J. Bradley
Clerk of Court
515 Rusk Street
Houston, TX 77002

RE: Filing of Papers

Dear Mr. Bradley:

Enclosed please find an original complaint for filing with your office. I have enclosed a check for $400.00 for the filing fee. The filing includes the original and two copies, a request for e-filing approval, and the civil cover sheet. You will also find three (3) CDs.

1. The Complaint and the documents referenced above

2. A Rule 11 Motion for Sanctions in a related case, required to be filed separately from any other motion

3. A Petition for Rule 60 relief in the related case

Please feel free to contact the undersigned if you have any questions or need further information.
Sincerely,

Candace L. Curtis
Pro se

/clc

United States Courts
Southern District of Texas
FILED

JUL 05 2016

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§	
v	§	Civil Action No. 4:12-cv-00592
ANITA KAY BRUNSTING, et al Defendants	§	

PLAINTIFF CANDACE LOUISE CURTIS'
MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING.

As the Plaintiff in the above-captioned matter, I respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
   a. A computer with internet access;
   b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.
   c. A scanner to convert documents that are only in paper format into electronic files;
   d. A printer or copier to create required paper copies such as chambers copies;
   e. A word-processing program to create documents; and
   f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Date: 7/2/2016

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§	Civil Action No. 4:12-cv-00592
	§	[PROPOSED] ORDER GRANTING
v	§	MOTION FOR PERMISSION FOR
	§	ELECTRONIC CASE FILING
ANITA KAY BRUNSTING, et al Defendants	§	
	§	DATE:
	§	TIME:
	§	COURTROOM:
	§	JUDGE:

The Court has considered the Motion for Permission for Electronic Case Filing. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED

DATED: _____ _____

United States District Judge

United States District Court
Southern District of Texas
ENTERED
July 06, 2016
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 4:16ī cvī 01969
Curtis et al v. Kunzī Freed et al

ORDER FOR CONFERENCE AND
DISCLOSURE OF INTERESTED PARTIES

1. Counsel and all parties appearing *pro se* shall appear for an initial pretrial and scheduling conference before

JUDGE ALFRED H. BENNETT
on October 28, 2016 at 09:00 AM
at United States Courthouse
Courtroom 8B, 8th Floor
515 Rusk Avenue
Houston, Texas 77002

2. Counsel shall file with the clerk within fifteen days from receipt of this order a certificate listing all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. If a group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded. If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.

3. After the parties confer (in person or by telephone) as required by FED. R. CIV. P. 26(f), counsel and all parties appearing *pro se* shall prepare and file not less than 10 days before the conference a joint discovery/case management plan containing the information as required by FED. R. CIV. P. 26(f) using the form available at http://www.txs.uscourts.gov/sites/txs/files/ahb_jdcmp.pdf.

4. The court will enter a Docket Control Order and may rule on any pending motions at the conference.

5. Counsel and all parties appearing *pro se* who file or remove an action must serve a copy of this order with the summons and complaint or with the notice of removal.

6. Attendance by an attorney who has authority to bind each represented party is required at the conference.

7. Counsel and all parties appearing *pro se* shall discuss whether alternative dispute resolution is appropriate and at the conference advise the court of the results of their discussions.

8. Counsel and all parties appearing *pro se* will deliver to chambers copies of all instruments filed within 7 days of the conference and within 7 days of any future court hearing or conference. Unless this rule is complied with the court will not consider any instrument filed within 7 days of any court appearance.

9. FED. R. CIV. P. 4(m) requires defendant(s) to be served within 90 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 90 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.

10. Counsel will deliver to chambers copies of all instruments filed under seal regardless of their length.

11. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs.

By Order of the Court

Court Procedures: Information on the court's practices and procedures and how to reach court personnel may be obtained at the Clerk's website at www.txs.uscourts.gov or from the intake desk of the Clerk's office.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al
Plaintiff
v.
Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Candace Kunz-Freed
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 7/22/16

Signature of the attorney or unrepresented party

CANDACE KUNZ-FREED
Printed name of party waiving service of summons

Cory S. Reed
Printed name

ONE RIVERWAY, SUITE 1400 HOUSTON, TX 77056
Address

CREED@THOMPSONCOE.COM
E-mail address

(713) 403-8213
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al
Plaintiff

v.

Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Albert Vacek Jr.
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/12/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 7/22/16

Signature of the attorney or unrepresented party

Albert Vacek Jr.
Printed name of party waiving service of summons

Cory S. Reed
Printed name

ONE RIVERWAY, SUITE 1900 HOUSTON, TX 77056
Address

CREED@THOMPSONCOE.COM
E-mail address

(713) 403-82313
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. *By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.*

17-20360.87

United States District Court
Southern District of Texas
FILED
JUL 20 2016
David J. Bradley, Clerk of Court

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

Curtis et al.,	§	
	§	
vs.	§	
	§	Civil Action No.4:16-cv-01969
Kunz-Freed et al.,	§	

CERTIFICATE OF INTERESTED PERSONS

Pursuant to this Court's Order of July 6, 2016, Plaintiffs provide the following list of persons financially interested in the outcome of this litigation.

1.	Candace Louise Curtis	Plaintiff
2.	Rik Munson	Plaintiff
3.	Candace Kunz-Freed	Defendant
4.	Albert Vacek Jr.	Defendant
5.	Bernard Lyle Mathews	Defendant
6.	Anita Brunsting	Defendant
7.	Amy Brunsting	Defendant
8.	Neal Spielman	Defendant
9.	Bradley Featherston	Defendant
10.	Stephen A. Mendel	Defendant
11.	Darlene Payne Smith	Defendant
12.	Jason Ostrom	Defendant
13.	Gregory Lester	Defendant
14.	Jill Willard Young	Defendant
15.	Bobbie Bayless	Defendant

17-20360.88

16. Christine Riddle Butts Defendant

17. Clarinda Comstock Defendant

18. Toni Biamonte Defendant

19. People of the State of Texas, of the United States, and anyone forced to seek declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense, are persons financially interested in this litigation.

20. Every honest legal professional whose legitimate work product is rendered worthless by judicial corruption is a person financially interested in this litigation.

21. Every dishonest legal professional that uses the court systems as a front for organized crime is a person potentially financially interested in this litigation.

Respectfully submitted,

Rik Wayne Munson 7/19/2016 Date

Candace Louise Curtis 7/19/2016 Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CLERK OF COURT
P.O. Box 61010
HOUSTON, TEXAS 77208

United States District Court
www.txs.uscourts.gov Southern District of Texas
FILED
JUL 25 2016
David J. Bradley, Clerk of Court

Candace Louise Curtis
218 Landana Street
American Canyon CA US 94503

Case: 4:16-cv-01969 Instrument: 3 (2 pages) pty
Date: Jul 6, 2016
Control: 16071955
Notice: The attached order has been entered.

Case 4:16-cv-01969 Document 7 Filed in TXSD on 07/25/16 Page 2 of 2

17-20360.91

CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
POST OFFICE BOX 61010
HOUSTON, TEXAS 77208

U.S. POSTAGE PITNEY BOWES
ZIP 77002 $ 000.46[5]
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United States District Court
Southern District of Texas
FILED
JUL 25 2016
David J. Bradley, Clerk of Court

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
BC: 77208101010 *0733-03485-06-44

77208101010

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al
Plaintiff

v.

Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Jason Ostrom
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 08/08/2016

Signature of the attorney or unrepresented party

Jason Ostrom
Printed name of party waiving service of summons

Jason B. Ostrom
Printed name

6363 Woodway, Suite 300
Address

jason@ostrommorris.com
E-mail address

713-822-6209
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

United States District Court
Southern District of Texas
FILED
AUG 05 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al
Plaintiff

v.

Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Christine Riddle Butts
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 7/21/16

Signature of the attorney or unrepresented party

Christine Butts
Printed name of party waiving service of summons

Laura Beckman Hedge
Printed name

Harris County Attorney's Office
1019 Congress, 15th Floor,
Houston, Texas 77002
Address

laura.hedge@cao.hctx.net
E-mail address

(713) 274-5137
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

United States District Court
Southern District of Texas
FILED

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

AUG 05 2016

for the

Southern District of Texas

David J. Bradley, Clerk of Court

Curtis et al
Plaintiff

v.

Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Clarinda Comstock
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 7/21/16

Signature of the attorney or unrepresented party

Clarinda Comstock
Printed name of party waiving service of summons

Laura Beckman Hedge
Printed name

Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
Address

laura.hedge@cao.hctx.net
E-mail address

(713) 274-5137
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States District Court
Southern District of Texas
FILED
AUG 10 2016
David J. Bradley, Clerk of Court

Curtis et al
Plaintiff

v.

Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Bobbie Bayless
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/09/2016, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 8/2/16

Bobbie G. Bayless
Printed name of party waiving service of summons

Bobbie G. Bayless
Signature of the attorney or unrepresented party

Bobbie G. Bayless
Printed name

2931 Ferndale, Houston, Tx 77098
Address

bayless@baylesslaw.com
E-mail address

713-522-2224
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. *By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.*

United States District Court
Southern District of Texas
FILED
AUG 10 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' NOTICE OF RELATED CASE (Local Rule 5.2)

Civil Action No. 4:16-cv-01969 currently pending before the Honorable Judge Alfred H. Bennett is closely related to Civil Action 4:12-cv-00592.

A Rule 60 F.R.C.P. motion is pending before the Honorable Judge Kenneth Hoyt, that is also relevant in the above-referenced action. All of the Parties to the above titled action are hereby noticed that these cases and events are closely related and the findings of fact and conclusions of law in the civil breach of fiduciary 4:12-cv-00592 will have a direct bearing on the civil RICO 4:16-cv-01969 action.

8-8-2016
Rik Wayne Munson Date

218 Landana Street
American Canyon CA 94503
925-349-8348
blowintough@att.net

17-20360.96

Certificate of Service

I hereby certify that a true and correct copy of the forgoing was deposited in the U.S. mail. with postage fully prepaid on the 8th day of August 2016, via U.S.P.S. Priority Mail addressed as follows:

Jason Ostrom
Ostrom Morris, PLLC
6363 Woodway, Suite 300
Houston, TX 77057

Bobbie G. Bayless
2931 Ferndale
Houston, TX 77098

Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, TX 77010

Attorneys for Albert Vacek Jr., and Candace Kunz-Freed
Corey Reed
Thompson Coe
One Riverway, Suite 1700
Houston, TX 77056

Bernard Lyle Mathews III
2000 S. Dairy Ashford Rd, Suite 520
Houston, TX 77077

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079

Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, TX 77079

Jill Willard Young
2900 Weslayan, Suite 150
Houston, TX 77027

Bradley E. Featherston
Featherston Tran P.L.L.C.
20333 State Highway 249, Suite 200
Houston, TX 77070

Tony Baiamonte III
1608 Victor Street
Houston, TX 77019

Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, TX 77904

Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, TX 78132

Attorneys for Christine Riddle Butts and Clarinda Comstock
Laura Beckman Hedge, Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002
Via email at Laura.Hedge@cao.hctx.net

8-3-2016

R. Wayne Munson
218 Landana Street
American Canyon CA 94503
925-759-9020
blowintough@att.net

United States District Court
Southern District of Texas
FILED
AUG 10 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al Plaintiff,	§	
v	§	Civil Action No. 4:16-cv-01969
Kunz-Freed, et al Defendants	§	

PLAINTIFF RIK MUNSON AND PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING.

As the Pro se Plaintiffs in the above-captioned matter, we respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
    a. A computer with internet access;
    b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.
    c. A scanner to convert documents that are only in paper format into electronic files;
    d. A printer or copier to create required paper copies such as chambers copies;
    e. A word-processing program to create documents; and
    f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Date: 8-8-2016

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

Rik Wayne Munson
218 Landana Street
American Canyon CA 94503
925-759-9020
Blowintough@att.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al Plaintiffs	§ §	
v	§	Civil Action 4:16-cv-01969
Kunz-Freed, et al Defendants	§ §	

Certificate of Service

I hereby certify that a true and correct copy of the following documents was deposited in the U.S. mail with postage fully prepaid on the 8th day of August 2016, via U.S.P.S. Priority Mail addressed as follows:

1. Motion for Rule 60 Relief, Documents 115-119 in Case 4:12-cv-00592 filed TXSD 2016-08-03.
2. Certificate of Interested Persons
3. Application for CM/ECF access
4. Notice of Related Case filing

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010

Attorneys for Albert Vacek Jr.
and Candace Kunz-Freed
Corey Reed
Thompson Coe
One Riverway, Suite 1700
Houston, Texas 77056

Jason Ostrom
Ostrom Morris, PLLC
6363 Woodway, Suite 300
Houston, Texas 77057

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098

Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, TX 77079

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, TX 77904

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Attorneys for Christine Riddle Butts and Clarinda Comstock
Laura Beckman Hedge Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002
Via email at Laura.Hedge@cao.hctx.net

Bernard Lyle Mathews III
2000 S. Dairy Ashford Rd, Suite 520
Houston, Texas 77077

Jill Willard Young
2900 Weslayan, Suite 150
Houston, TX 77027

Bradley E. Featherston
Featherston Tran P.L.L.C.
20333 State Highway 249 suite 200
Houston, Texas 77070

Tony Baiamonte III
1608 Victor Street
Houston, TX 77019

Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, TX 78132

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	Civil Action No. 4:16-cv-001969
Plaintiffs	§	
	§	[PROPOSED] ORDER GRANTING
v	§	MOTION FOR PERMISSION FOR
	§	ELECTRONIC CASE FILING
Kunz-Freed, et al	§	
Defendants	§	DATE:
	§	TIME:
	§	COURTROOM:
	§	JUDGE:

The Court has considered the Motion for Permission for Electronic Case Filing. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED

DATED: _____

_____
United States District Judge

United States District Court
Southern District of Texas
ENTERED
August 12, 2016
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	Civil Action No. 4:16-cv-001969
Plaintiffs	§	
	§	] ORDER GRANTING
v	§	MOTION FOR PERMISSION FOR
	§	ELECTRONIC CASE FILING
Kunz-Freed, et al	§	
Defendants	§	DATE:
	§	TIME:
	§	COURTROOM:
	§	JUDGE:

The Court has considered the Motion for Permission for Electronic Case Filing. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED

AUG 12 2016

DATED: _____

_____
United States District Judge

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, TX 78132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Amy Ruth Brunsting was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, TX 77904

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Anita Kay Brunsting was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Bernard Lyle Mathews III
2000 S. Dairy Ashford Rd, Suite 520
Houston, Texas 77077

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Bernard Lyle Mathews III was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Bradley E. Featherston
Featherdston Tran P.L.L.C.
20333 State Highway 249 suite 200
Houston, Texas 77070

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Bradley E. Featherston was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Darlene Payne Smith was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, TX 77079

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Gregory Lester was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Jill Willard Young
2900 Weslayan, Suite 150
Houston, TX 77027

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Jill Willard Young was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Neal E. Spielman was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Stephen A. Mendel was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____
Plaintiff(s)

v.

_____
Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS	§	
RICK WAYNE MUNSON	§	
Plaintiffs	§	
	§	
VS.	§	
	§	**C.A. No. 4:16-cv-01969**
	§	
CANDACE KUNZ-FREED., *ET AL.*	§	
Defendants	§	

CERTIFICATE OF INTERESTED PARTIES

Pursuant to this Court's Order for Conference and Disclosure of Interested Parties [Dkt. No.3] and Federal Rule of Civil procedure 7.1, Defendant Jason Ostrom disclose the following persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations and/or other entities that are financially interested in the outcome of this litigation:

1. Candace Louise Curtis, Plaintiff
2. Rik Munson, Plaintiff
3. Candace Kunz-Freed, Defendant
4. Albert Vacek Jr., Defendant
5. Bernard Lyle Mathews, Defendant
6. Anita Brunsting, Defendant
7. Amy Brunsting, Defendant
8. Neal Spielman, Defendant
9. Bradley Featherston, Defendant
10. Stephen A. Mendel, Defendant
11. Darlene Payne Smith, Defendant

12. Jason Ostrom, Defendant

13. Gregory Lester, Defendant

14. Jill Willard Young, Defendant

15. Bobbie Bayless, Defendant

16. Christine Riddle Butts, Defendant

17. Clarinda Comstock, Defendant

18. Toni Biamonte, Defendant

Respectfully submitted,

ostrommorris, PLLC

By: _____

R. KEITH MORRIS, III
(TBN #24032879)
KEITH@OSTROMMORRIS.COM
STACY L. KELLY
(TBN #24010153)
Federal ID No. 28841
stacy@ostrmmorris.com
JASON B. OSTROM
(TBN #24027710)
jason@ostrommorris.com
6363 Woodway, Suite 300
Houston, Texas 77057
713.863.8891
713.863.1051 (Facsimile)

ATTORNEYS FOR JASON OSTROM

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above pleading has been served on this 24th day of August, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

Stacy L. Kelly

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States District Court
Southern District of Texas
FILED
AUG 30 2016
David J. Bradley, Clerk of Court

Curtis et al
Plaintiff
v.
Kunz-Freed et al
Defendant

Civil Action No. 4:16-cv-01969

WAIVER OF THE SERVICE OF SUMMONS

To: Tony Baiamonte
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 07/~~09~~/2016 8/8/16 the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

see attached postal envelope

Date: 8/16/16

Tony Baiamonte
Printed name of party waiving service of summons

Signature of the attorney or unrepresented party

Laura Beckman Hedge
Printed name

Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, TX 77002
Address

laura.hedge@cao.hctx
E-mail address

(713) 274-5137
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS	§	
RICK WAYNE MUNSON	§	
Plaintiffs	§	
	§	
VS.	§	
	§	**C.A. No. 4:16-cv-01969**
	§	
CANDACE KUNZ-FREED., *ET AL.*	§	
Defendants	§	

UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING

Defendant Jason B. Ostrom respectfully requests that the Court extend his responsive pleading deadline to Monday, November 7, 2016. Plaintiffs have consented to this Motion. Pursuant to Section B(5)(B) of the Court's Procedures and Practices, Jason B. Ostrom also submits a proposed order.

Respectfully submitted,

ostrommorris, PLLC

By:

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ATTORNEYS FOR JASON B. OSTROM

CERTIFICATE OF CONFERENCE

I certify that I have communicated with Plaintiffs, and they are unopposed to the relief sought herein.

Stacy L. Kelly

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above pleading has been served on this 2nd day of September, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

Stacy L. Kelly

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS	§	
RICK WAYNE MUNSON	§	
Plaintiffs	§	
	§	
VS.	§	
	§	**C.A. No. 4:16-cv-01969**
	§	
CANDACE KUNZ-FREED., *ET AL.*	§	
Defendants	§	

[PROPOSED] ORDER

Before the Court is the Unopposed Motion to File Responsive Pleading, filed by Defendant Jason B. Ostrom. The Motion is **GRANTED**. The deadline for Jason B. Ostrom to file a responsive pleading is hereby extended up to and including November 7, 2016. All other deadlines remain in full force and effect.

SO ORDERED.

Date: September _____, 2016.

_____
ALFRED H. BENNETT
UNITED SATTES DISTRICT JUDGE

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

CANDACE LOUISE CURTIS AND RICK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	**CIVIL ACTION NO. 4:16-CV-01969**
	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN A. MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER, JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTTS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA 'BRUNSTING, AND AMY BRUNSTING,	§	
	§	
Defendants.	§	

DEFENDANTS CANDACE KUNZ-FREED AND ALBERT VACEK JR.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendants Candace Kuntz-Freed and Albert Vacek, Jr. (collectively referred to as "V&F") hereby file this Motion to Dismiss for Failure to State a Claim and would respectfully show the Court the following:

I.
BACKGROUND

1. For the purpose of this motion, V&F incorporates the detailed background contained in their Motion to Dismiss for Lack of Subject Matter Jurisdiction.

II.
BASIS FOR MOTION TO DISMISS AND STANDARD OF REVIEW

2. Rule 12(b)(6) authorizes dismissal of an action for "failure to state a claim upon which relief can be granted" if the plaintiff's complaint lacks "direct allegations on every material point necessary to sustain a recovery" or fails to "contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." FED. R. CIV. P. 12(b)(6); *Campbell v. San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995). Although a court is required to accept all well-pleaded facts as true, a court does not accept as true conclusory allegations, "unwarranted deductions of fact," or "legal conclusions masquerading as factual conclusions." *See, e.g., Tuchman v. DSC Communications*, 14 F.3d 1061, 1067 (5th Cir. 1994). A claim must be dismissed if the claimant can prove no set of facts that would entitle it to relief. *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995) "The court is not required to 'conjure up unpled allegations or construe elaborately arcane scripts to' save a complaint." *Id.* For the reasons set forth in more detail below, Plaintiffs' claims should be dismissed because Plaintiffs have failed to state a claim upon which relief may be granted.

III.
ARGUMENTS AND AUTHORITIES

A. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE PLAINTIFFS HAVE NOT ADEQUATELY PLEADED A VIOLATION OF THE RICO ACT.

3. To survive a Rule 12(b)(6) motion to dismiss, Plaintiffs must allege the following:

> (1) that a "person" within the scope of the statute (2) has utilized a "pattern of racketeering activity" or the proceeds thereof (3) to infiltrate an interstate "enterprise" (4) by [violations of § 1962 subsections] (a) investing the income derived from the pattern of racketeering activity in the enterprise; (b) acquiring or maintaining an interest in the enterprise through the pattern of racketeering activity; (c) conducting the affairs of the enterprise through the pattern of racketeering activity; or (d) conspiring to commit any of the above acts.

Hon. Jed S. Rakoff & Howard W. Goldstein, *RICO: Civil and Criminal Law and Strategy*, § 1.02 (2006); *see also Delta Truck & Tractor, Inc. v. J.I.* Case Co., 855 F.2d 241, 242 (5th Cir. 1988), *cert. denied*, 489 U.S. 1079 (1989); *Cadle Co. v. Schultz*, 779 F. Supp. 392, 396 (N.D. Tex. 1991).

4. Each of these elements is a "term of art which carries its own inherent requirements of particularity." *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989). Thus, "[u]nlike other claims, a RICO claim must be plead with specific facts, not mere conclusions, which establish the elements of a claim under the statute." *Andrade v. Chojnacki,* 65 F. Supp. 2d 431, 450 (W.D. Tex. 1999) (dismissing RICO claims for failure to include "specific facts" in complaints). Plaintiffs are not entitled to submit a conclusory, barebones complaint that fails to provide fair notice of the facts on which they rely. Likewise, including paragraph after paragraph of irrelevant allegations will not satisfy Plaintiffs pleading burden. The onus of asserting clear and understandable allegations falls squarely on Plaintiffs, who cannot avoid that obligation by filing a confusing complaint that requires the court or the defendant to strain in an attempt to comprehend the incomprehensible. *See, e.g., Old Time Enterprises v. Int'l Coffee Corp.*, 862 F.2d 1213, 1218 (5th Cir. 1989) (dismissing RICO allegations and stating "[i]t is perhaps not impossible that a RICO claim may lie hidden or buried somewhere in [plaintiff's] complaints and the Standing Order case statement. [Plaintiff's] pleadings do not unequivocally negate such a possibility. However, they also do not state a RICO claim against defendants with sufficient intelligibility for a court or opposing party to understand whether a valid claim is alleged and if so what it is.").

1. PLAINTIFFS HAVE NOT ADEQUATELY PLEADED THE NECESSARY PREDICATE ACTS.

5. Plaintiffs have brought their RICO action under 18 U.S.C. § 1962(c) and (d). To avoid dismissal for failure to state a claim, a plaintiff must articulate how each defendant

engaged in a prohibited pattern of racketeering activity or "predicate acts." *Cadle Co.,* 779 F. Supp. at 397 (citing *Elliott,* 867 F.2d at 882). The only "facts" cited by Plaintiffs regarding V&F's predicate acts are contained in paragraphs 133 and 145 – 151. The RICO Act defines "racketeering activity" by reference to various state and federal offenses, "each of which subsumes additional constituent elements that the plaintiff must plead." *Id.* at 398. As demonstrated below, Plaintiffs have failed to adequately plead these necessary predicate acts.

a. PLAINTIFFS HAVE FAILED TO ALLEGE AN UNLAWFUL ACT AGAINST V&F.

6. With respect to V&F, Plaintiffs have listed four federal crimes that appear in 18 U.S.C § 1961(1)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simple list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead specific facts that, if true, would establish that each predicate act was in fact committed by V&F. *Elliott*, 867 F.2d at 880. Plaintiffs' Complaint fails to meet this standard. For most of the identified predicated acts, Plaintiffs simply identify the statute, provide a general description of the conduct it prohibits, and then asserts that V&F violated the statute. However, these allegations are baseless on its face and a far cry from the truth. Accordingly, Plaintiffs' claims must be dismissed.

b. PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD WITH PARTICULARITY THEIR FRAUD-BASED PREDICATE ACTS AS REQUIRED BY FEDERAL RULE 9(B).

7. Most of Plaintiffs' predicate acts are, at their core, allegations of fraudulent behavior. Because all of Plaintiffs' allegations are fundamentally grounded in fraud, "rule 9(b) applies and the predicate acts alleged must be plead with particularity." *Walsh v. America's Tele-Network Corp.,* 195 F. Supp. 2d 840, 846 (E.D. Tex. 2002) (citing *Williams v. WMX Techs., Inc.,* 112 F.3d 175, 177 (5th Cir. 1997)); FED. R. CIV. P. 9(b) ("In all averments of fraud or mistake,

the circumstances constituting fraud or mistake shall be stated with particularity."). Underpinning the heightened pleading requirement for fraud claims is the federal courts' determination that "defendants are not required to guess what statements were made in connection with a plaintiff's claim and how and why they are fraudulent." *Allstate Insurance Company v. Benhamou*, No. 4:15-CV-00367, 2016 WL 3126423, at *17 (S.D. Tex. June 2, 2016). Thus, Plaintiffs' fraud allegations must specifically refer to the "time, place, and contents of the false representations, as well as the identity of the person making the representation and what the person obtained thereby." *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.,* 975 F.2d 1134, 1138 (5th Cir. 1992); *Skidmore Energy, Inc. v. KPMG LLP*, No. CIV.A.3:03CV2138-B, 2004 WL 3019097, at *3 (N.D. Tex. Dec. 28, 2004). When pleading a claim for mail or wire fraud, Plaintiffs must specify the content of the alleged communications and how those communications advanced the alleged scheme to defraud the Plaintiffs. *Elliott*, 867 F.2d at 882; *Old Time Enterprises*, 862 F.2d at 1218; *Tel-Phonic Servs.,* 975 F.2d at 1138.

8. Here, Plaintiffs have failed to allege the contents of *any* of the purported false representations made by V&F, or how they advanced the alleged scheme to defraud Plaintiffs, flaws that are fatal to their claims. Moreover, as stated above, Plaintiffs offer no real factual support for their obstruction of justice, mail and wire-fraud allegations, or truly any of their claims. Given these fatal defects, the Court should dismiss Plaintiffs' RICO action.

c. PLAINTIFFS HAVE FAILED TO PLEAD RELIANCE IN CONNECTION WITH THEIR FRAUD RELATED CLAIMS.

9. RICO cases based upon fraud require a showing of detrimental reliance by the plaintiff. *Summit Properties, Inc. v. Hoechst Celanese Corp.*, 214 F.3d 556, 562 (5th Cir. 2000) (dismissing RICO claims where plaintiff failed to allege reliance in connection with fraud-based predicate acts); *Sherman v. Main Event, Inc.*, No. 3:02-CV-1314-G, 2003 U.S. Dist. LEXIS

1571, *16 (N.D. Tex. Feb. 3, 2003) (Fish, J.) (unpublished) (dismissing RICO claims for mail, wire, and bankruptcy fraud where plaintiff failed to allege reliance). This requirement, the Fifth Circuit has determined, is consistent with the Supreme Court's admonition in *Holmes* that federal courts employ traditional notions of proximate cause when assessing the nexus between a plaintiff's injuries and the underlying RICO violation. *See Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 279 (1992); *Sandwich Chef of Texas, Inc. v. Reliance Nat'l Indemnity Ins. Co.*, 319 F.3d 205, 219 (5th Cir. 2003); *In re MasterCard International, Inc.*, 313 F.2d 257, 263 (5th Cir. 2002) (noting that district court's reliance analysis was "particularly compelling"). But, despite this firmly established requirement, Plaintiffs in this case have asserted *no* allegations—indeed, not even a conclusory allegation—detailing *how* they purportedly relied upon V&F's allegedly fraudulent conduct. Accordingly, Plaintiffs' RICO claims, most of which are fraud-based, should be dismissed.

2. PLAINTIFFS HAVE FAILED TO PLEAD A COGNIZABLE RICO ENTERPRISE.

a. PLAINTIFFS ENTERPRISE ALLEGATIONS ARE TOO VAGUE AND CONCLUSORY.

10. An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4); *see also Elliott*, 867 F.2d at 881. The Fifth Circuit requires that "[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise." *Elliott*, 867 F.2d at 881.

11. To establish an "association in fact" enterprise under 18 U.S.C. § 1961(4) a plaintiff must show "'evidence of an ongoing organization, formal or informal, and ... evidence

that the various associates function as a continuing unit.'" *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *U.S. v. Turkette*, 452 U.S. 576, 583 (1981)). The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct." 452 U.S. at 583. The Fifth Circuit has enumerated the requirements of an enterprise as requiring that it "(1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure." *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir.1990).

12. "[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity." *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987). However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO." *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 F.2d at 427).

13. Plaintiffs have provided virtually no facts concerning the alleged enterprise, how it operated, how decisions were made, what conduct beyond the alleged predicate acts they purportedly engaged in, how the operations of the individuals were carried out, or how they went about accomplishing their purported goals. Instead, Plaintiffs allege the text book elements of an enterprise characterized with inflammatory exaggerations and baseless conclusions.

14. Plaintiffs fail to allege any specific facts that would demonstrate a conspiracy of any kind—when it began, who was actually a part of such conspiracy or any facts suggesting that any defendant had actual knowledge that any of the seemingly harmless acts were done in furtherance of some secret conspiracy. In the absence of these or *any* other supporting facts, Plaintiffs' pleadings are simply insufficient.

15. Given RICO's "draconian" penalties and the fact that the very pendency of a RICO suit can be stigmatizing and costly, Plaintiffs should be required to satisfy their pleading obligations. *See Fitzgerald v. Chrysler Corp.,* 116 F.3d 225, 228 (7th Cir. 1997) (characterizing RICO's penalties as "draconian"); *Miranda v. Ponce Federal Bank,* 948 F.2d 41, 44 (1st Cir. 1991) (characterizing RICO cases as "stigmatizing" and "costly"). Hence, to avert dismissal under Rule 12(b)(6), a civil RICO complaint must, *at a bare minimum*, state facts sufficient to portray (i) specific instances of racketeering activity within the reach of the RICO statute; and (ii) a causal nexus between that activity and the harm alleged." *Miranda*, 948 F.2d at 44-45 (emphasis added) (affirming dismissal of RICO claims where the pleadings "though copious, [were] vague and inexplicit"). Plaintiffs have failed to meet even this "bare minimum" requirement. Therefore, this case should be dismissed.

b. PLAINTIFFS ALLEGED ENTERPRISE LACKS CONTINUITY.

16. Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements. *See*, *e.g.*, *Delta Truck,* 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962."). Specifically, "[a]n association-in fact enterprise (1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a

continuing unit as shown by a hierarchical or consensual decision making structure." *Crowe v. Henry,* 43 F.3d 198, 205 (5th Cir. 1995). These requirements limit the application of the RICO Act, and serve to prevent an overly-broad application to general commercial conduct that was never really the intended focus of the Act. *Delta Truck,* 855 F.2d at 242-43.

17. Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

3. PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD A PATTERN OF RACKETEERING ACTIVITY.

18. Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts. *See In re Burzynski*, 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck*, 855 F.2d at 242-43). To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other *and* that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity." *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity." *In re Burzynski*, 989 F.2d

at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity). Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition." *Id.* (quoting *H.J., Inc.*, 492 U.S. at 241).

19. Here, Plaintiffs alleges several times throughout their Complaint that V&F engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary pattern of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

4. PLAINTIFFS HAVE NOT ADEQUATELY ALLEGED A CONSPIRACY CLAIM UNDER § 1962(d).

20. A claim under § 1962(d) necessarily relies upon a properly pleaded claim brought under subsections (a), (b), or (c). Because Plaintiffs have failed to adequately plead violations of those other subsections, the § 1962(d) conspiracy allegation fails to state a claim. *Nolen v. Nucentrix Broadband Networks,* 293 F.3d 926, 930 (5th Cir. 2002) (affirming dismissal of § 1962(d) claim where plaintiff did not adequately plead § 1962(a) and (c) claims). Plaintiffs' conspiracy allegations are conclusory and lack supporting factual details. *See Lovick v. Ritemoney Ltd*, 378 F.3d 433, 437 (5th Cir. 2004) (holding that courts need not rely on "conclusional allegations or legal conclusions disguised as factual allegations" in considering a motion to dismiss); *see also Crowe*, 43 F.3d at 206 (dismissing § 1962(d) claim because plaintiff's allegations were conclusory and failed to allege adequate supporting facts). Plaintiffs mere insistence that V&F conspired to participate in a criminal enterprise is insufficient to support a RICO claim. As a result, this claim too should be dismissed.

C. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE PLAINTIFFS' ALLEGATIONS DO NOT SATISFY RICO'S PROXIMATE CAUSE STANDARD.

21. To recover damages under the RICO Act, Plaintiffs must prove that they suffered an injury to their "business or property by reason of" a statutory violation. 18 U.S.C. § 1964(c). The "by reason of" language of RICO has been interpreted by the Supreme Court and to require a showing that the violation was the "but for" cause and "proximate" cause of the injury. *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 559 (E.D. Tex. 2004) (citing *Holmes*, 503 U.S. at 279). That is, a plaintiff must allege facts which show that, "but for" defendant's conduct, the plaintiff would not have suffered the injuries claimed. *Ocean Energy II v. Alexander & Alexander, Inc.,* 868 F.2d 740, 744 (5th Cir. 1989). A plaintiff must also allege facts which show that its alleged injuries were a foreseeable consequence of the defendant's conduct. N*avigant Consulting, Inc. v. Wilkinson*, 508 F.3d 277, 289 (5th Cir. 2007). More plainly stated, a RICO plaintiff "only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the [RICO] violation." *Sedima,* 473 U.S. at 496.

22. Thus, to avoid a Rule 12(b)(6) dismissal, Plaintiffs must allege the existence of a "direct relation between the injury asserted and the injurious conduct alleged." *See, e.g., Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 452 (2006), 1996 (2006); *Old Time Enterprises*, 862 F.2d at 1219. These allegations must include specific facts; conclusory and generalized allegations are insufficient. *Fernandez-Montez v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993). "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiffs' injuries." *Anza*, 547 U.S. at 452.

23. The United States Supreme Court emphasized RICO's proximate-cause requirement in *Anza v. Ideal Steel Supply Corp*. In explaining its conclusion, the Supreme Court identified circumstances that emphasized the lack of the necessary causal connection. One such circumstance was the difficulty the trial court would have accurately ascertaining damages. The "less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiffs' damages attributable to the violation, as distinct from other independent factors." *Id.* If the case were allowed to go forward, the court reasoned, the trial court would be faced with the difficult task of accurately ascertaining the plaintiff's damages. *Id.*

24. Applying the above-referenced strict proximate-cause requirements in this case, it becomes clear that the required direct relationship between the injury asserted and the alleged injurious conduct is simply lacking. Plaintiffs' Complaint contains the following allegations regarding Plaintiffs' alleged injuries, which fail to meet the required pleading standards:

- Plaintiff Curtis is one of five beneficiaries of the Brunsting Family of Trusts, who has been deprived of the enjoyment of her beneficial interests, forced to incur expense and fees in effort to obtain the use of her property, and has suffered extortionist threats of injury to property rights and has suffered fraud upon both state and federal courts committed by corrupt court officers in furtherance of a pattern of racketeering, activity herein delineated with a particularity.

- As an actual consequence and proximate result Plaintiff Curtis has been injured in her business and property in an exact amount to be proven at trial.

- Plaintiff Munson is a multi-disciplinarian with skills that include but are not limited to information systems engineering and paralegal, among several other skilled crafts. Munson has worked diligently as a paralegal on the Curtis v. Brunsting lawsuit for more than four years, in effort to obtain justice for Ms. Curtis, only to be frustrated by a blatantly corrupt probate court and its officers herein named.

- As an actual consequence and proximate result of the racketeering conspiracy and the obstruction, intentional delay, refusal to administer justice and other means and methods employed, Plaintiff Munson has been diverted away from other productive pursuits and has thus suffered tangible losses to his property and business interest in an amount to be proven at trial.

25. Clearly, these allegations are insufficient to properly plead a violation of the RICO Act because they are vague, conclusory and generalized. Nevertheless, just like in *Anza*, Plaintiffs has alleged a similar disjunctive causation pattern with respect to their claims against V&F. There is not a direct relation between the injury asserted and the injurious conduct alleged as anticipated by *Anza*. At a minimum, the necessary causal link is missing. Because Plaintiffs have failed to allege facts necessary to meet the Supreme Court's high proximate-causation standard, this case should be dismissed.

D. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE A VIOLATION OF THE HOBBS ACT DOES NOT CREATE A PRIVATE CAUSE OF ACTION.

27. On its face, the Hobbs Act is a criminal statute which contains no reference to any private civil right of action. 18 U.S.C. § 1851. While the Fifth Circuit has not specifically spoken to this issue, other courts, have specifically held that the Hobbs Act creates no private right of action. *See, e.g.,*, *Trevino v. Pechero*, 592 F.Supp.2d 939, 946-47 (S.D. Tex. 2008); *Decker v. Dunbar*, No. 5:06-cv-210, 2008 WL 4500650, *43 (E.D. Tex Sept. 29, 2008). Because the Hobbs Act cannot support an independent civil action, Plaintiffs' Hobbs Act claim should be dismissed for failure to state a claim.

E. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE V&F CANNOT BE CIVILLY LIABLE FOR AIDING AND ABETTING

28. There is no statutory provision holding persons civilly liable for aiding and abetting violations of the RICO statute, and thus this claim must be dismissed as it is not a viable cause of action against V&F. *See Central Bank of Denver v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 182 (1994).

F. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE PLAINTIFFS HAVE NOT ADEQUATELY PLEADED A VIOLATION OF PLAINTIFFS' CIVIL RIGHTS.

1. Plaintiffs HAVE NOT ADEQUATELY PLEADED A CLAIM UNDER § 1983.

29. Section 1983 "provides a federal cause of action for the deprivation, under the color of law, of a citizen's 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994). To state a claim under § 1983, a plaintiff must allege facts that show that he has been deprived of a right secured by the Constitution and laws of the United States and that the deprivation occurred under color of state law. *See Flagg Bros, Inc. v. Brooks*, 436 U.S. 149, 155 (1978); *Cornish v. Corr. Servs. Corp.*, 402 F.3d 545, 549 (5th Cir. 2005). Plaintiffs cannot meet the essential element of this claim – identify a specific constitutionally protected right that has been infringed. *See Graham v. Connor*, 490, U.S. 386, 394 (1989). The requirement that the deprivation occur under color of state law is also known as the "state action" requirement. *See Bass v. Parkwood Hosp.*, 180 F.3d 234, 241 (5th Cir. 1999). A private party, like V&F, will be considered in a state action for § 1983 purposes only in rare circumstances. *See Gordon v. Neugebauer*, 57 F.Supp.3d 766, 773 (N.D. Tex. 2014). V&F requests the Court dismiss Plaintiffs' § 1983 claims because Plaintiffs' Complaint fail to allege facts that, if true, would amount to a violation of § 1983.

30. There are two ways that a private actor can be considered a state actor for purposes of imposing § 1983 liability. First, the plaintiff can show that the private actor was implementing an official government policy. *See Rundus v. City of Dallas, Tex.*, 634 F.3d 309, 312 (5th Cir. 2011). Plaintiffs have included no facts in their Complaint which, if true, would show that any of the governmental units sued by Plaintiffs had an official policy that caused the alleged constitutional violations—much less that V&F implemented that policy.

31. The second method for proving state action under § 1983 is a showing that the private entity's actions are fairly attributable to the government. *See Rundus*, 634 F.3d at 312. This is also known as the "attribution test." The Supreme Court has articulated a two-part inquiry for determining whether a private party's actions are fairly attributable to the government: (1) "the deprivation [of plaintiff's constitutional rights] must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible" and (2) "the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982); *see also Bass*, 180 F.3d at 241. Here, V&F are private citizens. Thus, V&F can only be liable under § 1983 if their conduct that forms the basis of this lawsuit is fairly attributable to the state of Texas or one of its political subdivisions.

32. The Supreme Court utilizes three different tests for determining whether the conduct of a private actor can be fairly attributable to a state actor under the second prong of the attribution test: (1) the nexus or joint-action test, (2) the public function test, and (3) the state coercion or encouragement test. *See Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 352 (5th Cir. 2003); *Lewis v. Law–Yone*, 813 F.Supp. 1247, 1254 (N.D. Tex. 1993) (describing the three tests as applicable to the resolution of the second prong of the attribution test articulated by the Supreme Court in *Lugar*).

a. NEXUS/JOINT-ACTION TEST

33. Under the nexus test, a private party will be considered a state actor "where the government has 'so far insinuated itself into a position of interdependence with the [private actor] that it was a joint participant in the enterprise,'" and the actions of the private party can be treated as that of the state itself. *Bass*, 180 F.3d at 242; *see also Blum v. Yaretsky*, 457 U.S. 991,

1004 (1982). Plaintiffs have pled no facts which would suggest that any state governmental entity has "insinuated itself into a position of interdependence" with V&F. Indeed, Plaintiffs fail to plead any facts which would show that V&F ever interacted or communicated with the any state governmental entity regarding the estate planning documents. Plaintiffs have failed to plead facts that would satisfy the nexus test for state action under § 1983.

b. PUBLIC FUNCTION TEST

34. Under the public function test, a "private entity may be deemed a state actor when that entity performs a function which is traditionally the exclusive province of the state." *Bass*, 180 F.3d at 241–42. Here, Plaintiffs' Complaint is devoid of any facts showing that V&F was performing a function that was traditionally the exclusive province of the state when they drafted the estate planning documents.

c. STATE COERCION OR ENCOURAGEMENT TEST

35. Under the state coercion test, "a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." *Bass*, 180 F.3d at 242. State coercion or compulsion can be found where the plaintiff establishes that the private defendants were engaged in a conspiracy with state officials. *See Tebo v. Tebo*, 550 F.3d 492, 496 (5th Cir. 2008).

36. To establish such a conspiracy, the plaintiff must show that the private and public actors entered into an agreement to commit an illegal act. *Id.* At the motion to dismiss stage, the plaintiff must "allege specific facts to show an agreement." *See id.* (quoting *Priester v. Lowndes*

Cnty., 354 F.3d 414, 421 (5th Cir. 2004)). Here, Plaintiffs have included no facts in their Complaint which would suggest that V&F entered into an agreement or was acting at the direction of any government official when they drafted the estate planning documents. There are simply no facts which would, if true, show the existence of an illegal agreement between V&F and a governmental entity. Plaintiffs have thus failed to plead facts showing that V&F was coerced or encouraged by any governmental entity with respect to drafting of the estate planning documents. *Priester*, 354 F.3d at 420 (conspiracy alleges that are "merely conclusory, without reference to specific facts," will not survive a motion to dismiss).

37. In sum, Plaintiffs' Complaint is devoid of the factual allegations necessary to plead state action under the nexus test, the public function test, or the state coercion or encouragement test. Plaintiffs have failed to establish the necessary state action required to hold a private actor liable under § 1983. Accordingly, Plaintiffs' § 1983 claims against V&F should be dismissed for failure to state a claim upon which relief can be granted.

2. Plaintiffs HAVE NOT ADEQUATELY PLEADED A CLAIM UNDER § 1985

38. To state a § 1985 claim, a plaintiff must plead: (1) a conspiracy involving two or more persons, (2) to deprive, directly or indirectly, a person or class of persons of equal protection of the laws, (3) that one or more of the conspirators committed an act in furtherance of that conspiracy, (4) which causes injury to another in his person or property or a deprivation of any right or privilege he has as a citizen of the United States, and (5) the conspirators' action is motivated by "discriminatory animus." *Wong v. Stripling*, 881 F.2d 200, 202 (5th Cir. 1989).

39. Plaintiffs' § 1985 claim fails for several reasons. First, a viable § 1985 claim requires an underlying violation of constitutional rights or privileges secured elsewhere. *See Griffin v. Breckenridge*, 403 US. 88, 102-04 (1971).

40. Plaintiffs' § 1985 claim also fails because Plaintiffs failed to properly identify facts sufficient to support the elements of a § 1985 claim. Plaintiffs' Complaint, as to this cause of action, is very brief and does not contain any factual averments from which a neutral fact finder could conclude that a conspiracy existed, that it was race-based, that Plaintiffs are in a protected class, or that it involved obstruction of justice or denial of equal protection of the laws.

41. Finally, Plaintiffs' § 1985 claim fails because they have provided no evidence whatsoever of class-based animus. Nor do Plaintiffs allege that they are members of a protected class. As such, Plaintiffs' § 1985 claims against V&F should be dismissed for failure to state a claim upon which relief can be granted.

F. TORTIOUS INTERFERENCE WITH INHERITANCE RIGHTS IS NOT A RECOGNIZED CAUSE OF ACTION IN TEXAS

42. Neither the Texas Legislature nor the Texas Supreme Court have recognized a cause of action for tortious interference with inheritance rights. *See Anderson v. Archer*, 490 S.W.3d 175, 176 (Tex. App.—Austin 2016, pet. filed May 18, 2016); *Walker v. Kinsel*, No. 07-13-00130-CV, 2015 WL 2085220, *3 (Tex. App.—Amarillo Apr. 10, 2015, pet. filed Aug. 19, 2015). Because this is not a viable cause of action, Plaintiffs claim for tortious interference with inheritance rights should be dismissed for failure to state a claim.

IV.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants Candace Kuntz-Freed and Albert Vacek, Jr. hereby request that their Motion to Dismiss for Failure to State a Claim on all claims alleged by Plaintiffs.

Respectfully Submitted,

By:/s/ *Cory S. Reed*

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ATTORNEYS FOR DEFENDANTS CANDACE KUNTZ-FREED AND ALBERT VACEK, JR.

CERTIFICATE OF SERVICE

I certify that on the 7th day of September, 2016, a true and correct copy of the foregoing was served was served via the Court's ECF system upon the following counsel of record:

Candace L. Curtis
Rik Wayne Munson
218 Landana Street
American Canyon, California 94503

/s/ Cory S. Reed
Cory S. Reed

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

CANDACE LOUISE CURTIS AND RICK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	**CIVIL ACTION NO. 4:16-CV-01969**
	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN A. MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER, JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTTS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA 'BRUNSTING, AND AMY BRUNSTING,	§	
	§	
Defendants.	§	

DEFENDANTS CANDACE KUNZ-FREED AND ALBERT VACEK JR.'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendants Candace Kuntz-Freed and Albert Vacek, Jr. (collectively referred to as "V&F") hereby file this Motion to Dismiss for Lack of Subject Matter Jurisdiction and would respectfully show the Court the following:

I.
SUMMARY OF MOTION

1. This is the most recent lawsuit filed in the "Brunsting Sibling Saga" and Plaintiff Candace Louise Curtis second attempt to have a federal judge consider these issues. In addition, similar claims are currently pending against V&F in Harris County, Texas. This Court does not

have subject matter jurisdiction over this case because Plaintiffs do not have standing to assert the present claims. Simply, Plaintiffs do not have an actual case or controversy with V&F. Plaintiffs cannot articulate any action traceable to V&F, which has caused any injury under any of the theoretical approaches taken by Plaintiffs. Additionally, V&F cannot be held liable to Plaintiffs. Accordingly, V&F requests that this Court dismiss Plaintiffs' claim for lack of subject matter jurisdiction.

II.
BACKGROUND

A. V&F HANDLED ESTATE PLANNING FOR THE BRUNSTING FAMILY.

2. Prior to their deaths, V&F had performed general estate planning legal services for Elmer and Nelva Brunsting beginning in 1997. On February 12, 1997, Elmer and Nelva created a living trust (the "Brunsting Family Living Trust") for their benefit and for the benefit of their five children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children[1]. Elmer and Nelva restated the Brunsting Family Living Trust in 2005, and amended it for the first time in 2007. The 2007 amendment replaced Amy with Curtis as co-successor trustee with Carl Brunsting (the only son of the family). After being diagnosed with Alzheimer's and Dementia, Elmer died in 2009. Thereafter, Nelva made all the decisions with respect to the Brunsting Family Living Trust until she resigned as trustee in December of 2010. She later died in November of 2011. Since the death of Nelva there have been numerous lawsuits filed by Curtis and her brother Carl against the rest of the Brunsting siblings.

B. CURTIS FIRST FEDERAL LAWSUIT ALLEGED SIMILAR ALLEGATIONS.

3. On February 27, 2012 Curtis originally filed an Original Complaint and Application for Ex Parte Temporary Restraining Order, Asset Freeze, Temporary and Permanent

[1] The beneficiary distribution has never been changed.

Injunction against Anita and Amy ("the Current Trustees") in the United States District Court for the Southern District of Texas[2] alleging breach of fiduciary duty, fraud, and intentional infliction of emotional distress. Generally, Curtis argued that the Current Trustees failed to meet their obligations under the Brunsting Family Living Trust.

4. Specifically with regards to the breach of fiduciary duty claim, Curtis alleged that Anita and Amy were acting jointly as co-trustees for the Brunsting Family Living Trust, of which she is a beneficiary and named successor beneficiary. Curtis claimed as the Current Trustees, they owed a fiduciary duty to Curtis to provide all beneficiaries and successor beneficiaries of the Brunsting Family Living Trust with information concerning trust administration, copies of trust documents, and semi-annual accounting. Curtis further contended that as the Current Trustees, they owed a fiduciary duty to provide notice to all beneficiaries prior to any changes to the trust that would affect their beneficiary interest. Curtis also alleged that the Current Trustees exercised all of the powers of trustees while refusing or otherwise failing to meet their first obligations under that power.

5. As to Curtis' fraud claim, she alleged that the Current Trustees refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or provide copies of material documents or notification of material facts relating to trust administration which constitutes fraud. Curtis also alleged that there was a conflict of interest between the Current Trustees and the beneficiaries or successor beneficiaries of the Brunsting Family Living Trust. In particular, Anita held the general power of attorney for Nelva, but at some point required her to resign making Anita her successor trustee. Curtis contended that Anita transgressed the limitation placed upon her authority by the Brunsting Family Living

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[2] *See* Cause No. 4:-12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting, et al*; In the United States District Court for the Southern District of Texas.

Trust by refusing or otherwise failing to meet her obligations to provide full, accurate, complete and timely accounting or provide copies of material documents and facts relating to trust administration, the concealing of which coupled with multiple conflicts of interest constitute manifests acts of fraud.

6. Curtis' intentional infliction of emotional distress claim stemmed from the Current Trustees failure to provide her with information related to the Brunsting Family Living Trust and the trust's administration.

C. CURTIS ATTEMPTED TO SUE V&F IN THE ORIGINAL FEDERAL LAWSUIT FOR SIMILAR CLAIMS.

7. On April 29, 2013 Curtis filed her First Amended Complaint attempting to add V&F as named Defendants to the Federal Court Suit[3]. As to Curtis specific allegations against V&F she had alleged conspiracy, fraud, elder abuse, undue influence, false instruments, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, tortuous interference with fiduciary obligations, conversion, and violations of the Deceptive Trade Practices Act. She claimed she was informed and believed V&F assisted the Current Trustees in "rupturing the Brunsting family trusts" by creating documents improperly disrupting the dispositive provisions of Elmer and Nelva's estate plan. Further, V&F provided substantial assistance in such conspiracy resulting in the transfer of assets for the benefit of one or more of the Current Trustees, and did so knowingly, willfully and with reckless indifference to the rights of Curtis and did receive compensation for their participation in said conspiracy.

8. Ultimately, on May 15, 2015, at Curtis' request the case was remanded to the pending probate proceeding in Harris County, Texas. That case is still pending before Judge

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[3] V&F was not added as a party to the lawsuit, because the Court denied Curtis' Motion for Leave to File the Amended Complaint.

Butts and most definitely involves similar questions of law and fact as the present lawsuit filed before this Court.

D. SIMILAR CLAIMS ARE CURRENTLY PENDING IN A MALPRACTICE LAWSUIT.

9. On March 9, 2012, Carl Henry Brunsting ("Carl") filed a Verified Petition to take Depositions Before Suit in Cause No. 2012-14538; *In re Carl Brunsting*; In the 80th Judicial District Court of Harris County, Texas. In that proceeding Carl conducted extensive written discovery and deposed at least one individual. On August 24, 2012 Carl and V&F entered into a Tolling Agreement Regarding Statute of Limitations, which tolled the applicable statute of limitations until December 31, 2012[4]. On January 29, 2013 [almost a year after filing the presuit petition], arguably past the applicable statute of limitations, Carl Henry Brunsting as the Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting brought a legal malpractice case against V&F for negligence, negligent misrepresentation, breach of fiduciary duty, aiding and abetting the current trustees' breaches of fiduciary duty, fraud, conversion, conspiracy, and violations of the Texas Deceptive Trade and Practices Act stemming from their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust[5].

10. Specifically, Carl alleged that V&F assisted the Current Trustees in implementing a scheme to change the terms of the Brunsting Family Living Trust, to ultimately remove Nelva from her position as trustee of the Brunsting Family Living Trust, and to improperly remove assets from Elmer and Nelva's estates and from the Brunsting Family Living Trust. Carl contended because of the actions of V&F, the Current Trustees were able to alter Elmer and

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4 The presuit litigation was dismissed for want of prosecution on October 23, 2012.

5 See Cause No. 2013-05455; *Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al*; In the 164th Judicial District Court of Harris County, Texas.

Nelva's wishes, resulting in an improper transfer of assets to Anita, Amy, and Carole, all to Carl and Curtis' detriment.

11. Carl further alleged that despite V&F's representations to Elmer and Nelva that the Brunsting Family Living Trust would preserve their plans for the estate, V&F took direction from the Current Trustees, with the result being just the opposite. Carl believed that V&F not only failed to inform Nelva that they had established a relationship with the Current Trustees, which put them in a conflict of interest with regard to their representation of Nelva's interest, but that V&F actually ignored the terms of the Brunsting Family Living Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. In his petition, Carl pleaded that V&F took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss to Anita, Amy, and Carole and facilitating the loss which actually occurred.

12. Moreover, Carl alleged that V&F assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by V&F at the Current Trustee's request, why those documents were being prepared, and what legal impact those documents had. Carl amended his petition three times.

13. On February 3, 2015, V&F took Carl's deposition in that proceeding. During the deposition, Carl could not provide any testimony to support the allegations he asserted against V&F. The next day, Carl's lawyer contacted V&F and said she thought Carl was acting strange during his deposition and she believed he might be incapacitated. Over one month later on March 5, 2015, Carl's counsel sent V&F a letter explaining that Carl's deposition testimony was without value because Carl lacked capacity during the deposition. On February 19, 2015, in the Probate Proceeding, Carl filed an application to resign as executor. The Probate Court granted

the application in March 2015. Until a successor executor is appointed, the malpractice lawsuit sits in limbo.

E. THE PENDING PROBATE PROCEEDING.

14. 70 days after filing the Malpractice Lawsuit and while the Federal Lawsuit was pending, on April 10, 2013, Carl filed suit against Anita, Amy, Carole Ann Brunsting, and Curtis[6] seeking a Declaratory Judgment, an Accounting, and for the Imposition of a Constructive Trust. *See* Cause No. 412.249-401; *Carl Henry Brunsting, et al v. Anita Kay Brunsting, et al*; In the Number Four Probate Court of Harris County, Texas. Similar to every lawsuit involving the Brunsting family, that lawsuit has drawn on with numerous filings, including motions for summary judgment (but no rulings).

15. On July 24, 2015 Judge Butts appointed Greg Lester ("Lester"), as a temporary administrator, to determine the merits of the claims asserted in the various lawsuits. On January 20, 2016 Lester provided a report, wherein he concluded:

- All of the legal actions taken by Nelva were within her authority;
- Any damages for unequal distribution can be resolved by equalizing the distributions to all siblings; and
- Recommended that the Probate Court should uphold the "No Contest" Clause.

16. On March 9, 2016 the parties were ordered to mediate the case with the Honorable Mark Davidson. The parties were scheduled to mediate on July 12, 2016, however the mediation was canceled at the last minute.

III.
BASIS FOR MOTION TO DISMISS AND STANDARD OF REVIEW

17. Rule 12(b)(1) permits the dismissal of an action for lack of subject matter jurisdiction when the district court lacks authority to hear the dispute. *See generally, U.S. v.*

[6] V&F is not a party to the Probate Proceeding.

Morton, 467 U.S. 822 (1984). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). To establish subject matter jurisdiction, a party must show than an actual case or controversy exists between himself and the party from whom relief is sought. Standing is an essential element in the determination of whether a true case or controversy exists. A motion to dismiss for lack of subject matter jurisdiction should be granted if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Id.*

IV.
ARGUMENTS AND AUTHORITIES

A. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE THEY DO NOT MEET THE STANDING REQUIREMENTS.

18. Under Article III, the Federal Judiciary is vested with the "power" to resolve not questions and issues, but "cases" or "controversies." This language restricts the federal judicial power "to the traditional role of the Anglo-American courts." *Summers v. Earth Island Institute*, 555 U.S. 488, 492 (2009). To state a case or controversy under Article III, a plaintiff must establish standing. *Allen v. Wright*, 468 U.S. 737, 751 (1984). The minimum constitutional requirements for standing were explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992):

> First, the plaintiff must have suffered an 'injury in fact' – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, nor "conjectural" or "hypothetical." Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be 'fairly … trace[able] to the challenged action of the defendant, and not … th[e] result [of] the independent action of some third party not before the court. Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

Id. at 560-61.

19. Plaintiffs in this case do not satisfy the requisite elements of standing. Plaintiffs have not suffered an injury in fact that was caused by V&F's conduct. Plaintiffs' Complaint fails

to identify or correlate the direct relationship between the injury asserted and the alleged injurious conduct. Plaintiffs' Complaint does not allege facts which show that, "but for" V&F's conduct, they would not have suffered the injuries claimed. *Ocean Energy II v. Alexander & Alexander, Inc.,* 868 F.2d 740, 744 (5th Cir. 1989); *see* N*avigant Consulting, Inc. v. Wilkinson*, 508 F.3d 277, 289 (5th Cir. 2007) (a plaintiff must also allege facts which show that its alleged injuries were a foreseeable consequence of the defendant's conduct).

20. In general, Curtis cannot demonstrate that she has been injured as a result of V&F's conduct. Curtis is still entitled to collect 1/5 of her inheritance under the Brunsting Family Living Trust. To the extent she has incurred any expense or fees it is because she has filed numerous frivolous lawsuits and attempted to fight her other siblings at every turn. Moreover, Munson is not a party to any of the prior lawsuits nor is he a beneficiary under to the Brunsting Family Living Trust. It is inconceivable that he could injured as a result of V&F's drafting of the estate planning documents. Plaintiffs' Original Complaint contains the following allegations regarding Plaintiffs' alleged injuries:

- Plaintiff Curtis is one of five beneficiaries of the Brunsting Family of Trusts, who has been deprived of the enjoyment of her beneficial interests, forced to incur expense and fees in effort to obtain the use of her property, and has suffered extortionist threats of injury to property rights and has suffered fraud upon both state and federal courts committed by corrupt court officers in furtherance of a pattern of racketeering, activity herein delineated with a particularity.

- As an actual consequence and proximate result Plaintiff Curtis has been injured in her business and property in an exact amount to be proven at trial.

- Plaintiff Munson is a multi-disciplinarian with skills that include but are not limited to information systems engineering and paralegal, among several other skilled crafts. Munson has worked diligently as a paralegal on the Curtis v. Brunsting lawsuit for more than four years, in effort to obtain justice for Ms. Curtis, only to be frustrated by a blatantly corrupt probate court and its officers herein named.

- As an actual consequence and proximate result of the racketeering conspiracy and the obstruction, intentional delay, refusal to administer justice and other means and methods

employed, Plaintiff Munson has been diverted away from other productive pursuits and has thus suffered tangible losses to his property and business interest in an amount to be proven at trial.

21. Clearly, these allegations are insufficient to demonstrate a "conclusive financial loss." *See Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998) (per curiam); *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 492 (5th Cir. 2003) (a plaintiff does not have standing unless they can show concrete financial loss). Plaintiffs cannot demonstrate that they have been harmed by V&F. In this case, there is not a direct relation between the injury asserted and the injurious conduct alleged. Because Plaintiffs have failed to allege facts necessary to meet the Supreme Court's high standing standard, this case should be dismissed.

B. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE V&F CANNOT BE LIABLE TO PLAINTIFFS.

22. Plaintiffs do not have standing to bring the suit against V&F. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). While Plaintiffs attempt to cloak their claims against V&F as violations of the Racketeer Influenced Corruption Organization Act (amongst others), they are truly allegations of malpractice. *i.e.* V&F did not exercise that degree of care, skill, or diligence as attorneys of ordinary skill and knowledge commonly possess.

23. Legal malpractice is a tort cause of action based on negligence. *See Belt v. Oppenheimer, Blend, Harrison & Tate, Inc.*, 192 S.W.3d 780, 783 (Tex. 2006). The elements of a claim for negligence by an attorney are: (1) the attorney owed the plaintiff a duty; (2) the attorney's negligence act or omission breached that duty; (3) the breach proximately caused the plaintiff's injury; and (4) the plaintiff suffered damages. *Akin, Gump, Strauss, Hauer & Feld, L.L.P. v. Nat'l Dev. & Research Corp.*, 299 S.W.3d 106, 112 (Tex. 2009).

24. In most lawsuits against an attorney, the existence of the attorney-client relationship is not in dispute. However, in this case the existence of the attorney-client

relationship is a principal defense. As a rule, an attorney owes a duty of care only to a person with whom the attorney has a professional attorney-client relationship. *Barcelo v. Elliott*, 923 S.W.2d 575, 577 (Tex. 1996).

25. It has long been the law that an attorney owes a duty of care only to his or her client, not to third parties who may have been damaged by the attorney's negligent representation of the client. *See Savings Bank v. Ward*, 100 U.S. 195, 200 (1879); *Banc One Capital Partners Corp. v. Kneipper*, 67 F.3d 1187, 1198 (5th Cir. 1995); *FinServ Cas. Corp. v. Settlement Funding, LLC*, 724 F. Supp. 2d 662, 671 (S.D. Tex. 2010); *Lewis v. Am. Expl. Co.*, 4 F. Supp. 2d 673, 676 (S.D. Tex. 1998); *F.D.I.C. v. Howse*, 802 F. Supp. 1554, 1563 (S.D. Tex. 1992); *Belt v. Oppenheimer, Blend, Harrison & Tate, Inc.*, 192 S.W.3d 780, 783 (Tex. 2006); *McCamish, Martin Brown & Loeffler v. F.E. Appling Interests*, 991 S.W.2d 787, 792 (Tex. 1999); *Barcelo*, 923 S.W.2d at 577; *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); *see also Stancu v. Stalcup*, 127 S.W.3d 429, 432 (Tex. App.—Dallas 2004, no pet.) (an attorney only owes a duty of care to his clients and not to third parties, even if they may have been damaged by the attorney's representation of the client). Non-clients who are injured by the negligence of someone else's attorney are not permitted to sue the attorney. *See Swank v. Cunningham*, 258 S.W.3d 647, 666 (Tex. App.—Eastland 2008, pet. denied); *Gillespie v. Scherr*, 987 S.W.2d 129 (Tex. App. —Houston [14th Dist.] 1998, pet. denied).

26. Because an attorney does not represent a trust beneficiary they do not owe a professional duty to them. *Barcelo*, 923 S.W.2d at 576; *see Huie v. DeShazo*, 922 S.W.2d 920 (Tex. 1996) (it would strain reality to hold that a trust beneficiary, who has no direct professional relationship with the trust's attorney, is the real client). Without this "privity barrier," the

rationale goes, clients would lose control over the attorney-client relationship, and attorneys would be subject to almost unlimited liability. *Barcelo*, 923 S.W.2d at 577. Courts have uniformly applied the privity barrier in the estate planning context. *See Brown v. Green*, 302 S.W.3d 1, 16 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *Thompson v. Vinson & Elkins*, 859 S.W.2d 617, 621–22 (Tex. App.—Houston [1st Dist.] 1993, writ denied); *Thomas v. Pryor*, 847 S.W.2d 303, 304–05 (Tex. App.—Dallas 1992), *writ dism'd by agr.*, 863 S.W.2d 462 (Tex.1993); *Dickey v. Jansen*, 731 S.W.2d 581, 582–83 (Tex. App.—Houston [1st Dist.] 1987, writ ref'd n.r.e.); *Berry v. Dodson, Nunley & Taylor, P.C.*, 717 S.W.2d 716, 718–19 (Tex. App.—San Antonio 1986), *writ dism'd by agr.*, 729 S.W.2d 690 (Tex.1987). A lawyer's professional duty should never extend to persons whom the lawyer never represented. *Barcelo*, 923 S.W.3d at 579.

27. In *Barcelo*, the court considered whether beneficiaries dissatisfied with the distribution of estate assets could sue an estate-planning attorney for legal malpractice after a client's death. *Id.* at 576. In that case, the intended beneficiaries of a trust, which was declared invalid after the client's death, sued the attorney who drafted the trust agreement. *Id.* The court concluded that the non-client beneficiaries could not maintain a suit against the decedent's estate planner because "the greater good is served by preserving a bright-line privity rule which denies a cause of action to all beneficiaries whom the attorney did not represent." *Id.* at 578.

28. Several policy considerations supported the *Barcelo* holding. First, the threat of suits by disappointed heirs after a client's death could create conflicts during the estate-planning process and divide the attorney's loyalty between the client and potential beneficiaries, generally compromising the quality of the attorney's representation. *Id.* at 578. The court also noted that suits brought by bickering beneficiaries would necessarily require extrinsic evidence to prove

how a decedent intended to distribute the estate, creating a "host of difficulties." *Id.* The *Barcelo* court subsequently held that barring a cause of action for estate-planning malpractice by beneficiaries would help ensure that estate planners "zealously represent[ed]" their clients. *Id.* at 578–79.

29. Because Plaintiffs were not a client of V&F they do not have standing to assert the present claims. *See Brown*, 302 S.W.3d at 16. As such, this Court must grant V&F's Motion to Dismiss.

V.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants Candace Kuntz-Freed and Albert Vacek, Jr. hereby request that their Motion to Dismiss for Failure to State a Claim on all claims alleged by Plaintiffs.

Respectfully Submitted,

By:/s/ *Cory S. Reed*

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ATTORNEYS FOR DEFENDANTS CANDACE KUNTZ-FREED AND ALBERT VACEK, JR.

CERTIFICATE OF SERVICE

I certify that on the 7th day of September, 2016, a true and correct copy of the foregoing was served was served via the Court's ECF system upon the following counsel of record:

Candace L. Curtis
Rik Wayne Munson
218 Landana Street
American Canyon, California 94503

/s/ Cory S. Reed
Cory S. Reed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	§	
RIK WAYNE MUNSON	§	
	§	
Plaintiffs	§	
	§	**CASE NO. 4:16-cv-01969**
vs.	§	
	§	
CANDACE KUNZ-FREED, et al.,	§	
	§	
Defendants	§	

DISCLOSURE OF INTERESTED PARTIES

COMES NOW Defendant, Bobbie G. Bayless, and hereby certifies that the following persons or entities have a financial interest in the outcome of this litigation.

1. Candace Louise Curtis, Plaintiff
   218 Landana Street
   American Canyon, CA 94503
   Telephone: 925.759.9020

2. Rik Wayne Munson, Plaintiff
   218 Landana Street
   American Canyon, CA 94503
   Telephone: 925.349.8348

3. Candace Kunz-Freed, Defendant
   c/o Zandra Foley
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   Houston, Texas 77056
   Telephone: 713.403.8213

4. Albert Vacek, Jr., Defendant
   c/o Zandra Foley
   Thompson Coe Cousins & Irons, LLP
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   Houston, Texas 77056
   Telephone: 713.403.8213

5. Bernard Lyle Mathews, III, Defendant
11777 Katy Freeway, Suite 300 South
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Telephone: 281.580.8100

6. Anita Kay Brunsting, Defendant
203 Bloomingdale Circle
Victoria, Texas 77904

7. Amy Ruth Brunsting, Defendant
2582 Country Ledge
New Braunfels, Texas 78132

8. Neal Spielman, Defendant
Griffin & Matthews
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Telephone: 281.870.1124

9. Bradley Featherston, Defendant
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10. Stephen A. Mendel, Defendant
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11. Darlene Payne Smith, Defendant
Crain, Caton & James
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Telephone: 713.752.8640

12. Jason Ostrom, Defendant
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6363 Woodway, Suite 300
Houston, Texas 77057
Telephone: 713.863.8891

13. Gregory Lester, Defendant
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Houston, Texas 77079
Telephone: 281.597.1300

14. Jill Willard Young, Defendant
MacIntyre, McCulloch, Stanfield and Young, LLP
2900 Weslayan, Suite 150
Houston, Texas 77027
Telephone: 713.572.2900

15. Bobbie G. Bayless, Defendant
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
Telephone: 713.522.2224

16. Christine Riddle Butts, Defendant
Presiding Judge
Harris County Probate Court Number 4
Harris County Civil Courthouse
201 Caroline
Houston, Texas 77002
Telephone: 713.368.6767

17. Clarinda Comstock, Defendant
Associate Judge
Harris County Probate Court Number 4
Harris County Civil Courthouse
201 Caroline, 7th Floor
Houston, Texas 77002
Telephone: 713.368.6767

18. Toni Biamonte, Defendant
c/o Laura Beckman Hedge
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: 713.274.5137

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

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Attorneys for Bobbie G. Bayless

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument has been served on this 7th day of September, 2016, through the Court's CM/ECF system.

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

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

CANDACE LOUISE CURTIS AND RICK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	**CIVIL ACTION NO. 4:16-CV-01969**
	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN A. MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER, JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTTS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA 'BRUNSTING, AND AMY BRUNSTING,	§	
	§	
Defendants.	§	

DEFENDANTS CANDACE KUNZ-FREED AND ALBERT VACEK JR.'S CERTIFICATE OF INTERESTED PARTIES

Defendants Candace Kunz-Freed and Albert Vacek Jr. respectfully submits their Certificate of Interested Parties listing all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation pursuant to the Court's Order for Conference and Disclosure of Interested Parties:

1. Candace Louise Curtis
   218 Landana Street
   American Canyon, California 94503

2. Rick Wayne Munson
   218 Landana Street
   American Canyon, California 94503

17-20360.171

3. Candace Kunz-Freed
C/o Zandra E. Foley
Cory S. Reed
Thompson Coe Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056

4. Albert Vacek Jr.
C/o Zandra E. Foley
Cory S. Reed
Thompson Coe Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056

5. Bernard Lyle Mathews

6. Anita Brunsting

7. Amy Brunsting

8. Neal Spielman

9. Bradley Featherston

10. Stephen A. Mendel

11. Darlene Payne Smith

12. Jason Ostrom
C/o R. Keith Morris, III
Stacy L. Kelly
Ostrom Morris, PLLC
6363 Woodway, Suite 300
Houston, Texas 77057

13. Gregory Lester

14. Jill Willard Young

15. Bobbie Bayless

16. Christine Riddle Butts

17. Clarinda Comstock

18. Toni Biamonte

In accordance with this Court's Order, if new parties are added, or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, counsel will promptly file an amended certificate with the clerk.

Respectfully Submitted,

By:/s/ *Cory S. Reed*
Zandra E. Foley
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S.D. Tex. No. 632778
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Telecopy: (713) 403-8299

ATTORNEYS FOR DEFENDANTS CANDACE KUNTZ-FREED AND ALBERT VACEK, JR.

CERTIFICATE OF SERVICE

I certify that on the 7th day of September, 2016, a true and correct copy of the foregoing was served was served via the Court's ECF system upon the following counsel of record:

Candace L. Curtis
Rik Wayne Munson
218 Landana Street
American Canyon, California 94503

/s/ Cory S. Reed
Cory S. Reed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	§	
RIK WAYNE MUNSON	§	
	§	
Plaintiffs	§	
	§	**CASE NO. 4:16-cv-01969**
vs.	§	
	§	
CANDACE KUNZ-FREED, et al.,	§	
	§	
Defendants	§	

BOBBIE G. BAYLESS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Bobbie G. Bayless ("Bayless"), one of the Defendants in the above entitled and numbered cause, and files her Motion to Dismiss for Failure to State a Claim, and in support thereof would respectfully show the Court as follows:

1. Plaintiffs filed an Original Complaint ("Complaint") purporting to assert causes of action against Bayless and numerous other Defendants for what Plaintiffs describe as: (1) violations of the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §1962(c); (2) conspiracy to violate 18 U.S.C. §1962(c); (3) conspiracy to violate due process rights; (4) conspiracy to deny equal protection of law; (5) conspiracy to deprive plaintiffs of an impartial forum; (6) breach of the public trust; (7) aiding and abetting public and private fiduciary breaches; (8) aiding and abetting fiduciary misapplications; and (9) claims allowed by 42 U.S.C. §1988(a), 18 U.S.C. §1964(c) and Rule 10b-5 Securities Exchange act of 1934 (17 C.F.R. §240.10b-5), including the right of private claims implied therefrom.

2. This case is related to a case pending in Harris County Probate Court Number 4 in Cause No. 412.249-401, styled *Carl Henry Brunsting, et al. v. Anita Kay Brunsting, et al.* in which Bayless represents Carl Henry Brunsting who is the brother of Plaintiff, Candace Louise Curtis. The action in the Harris County Probate Court involves disputes concerning a trust created by the parents of the five Brunsting siblings. Plaintiffs' Complaint in this Court, which even names the judge, associate judge, and a visiting court reporter of Harris County Probate Court Number 4, was filed days before a mediation was scheduled in the probate proceeding. The allegations, though difficult to follow, leave little question that the goal of this proceeding is to avoid that probate court mediation and the jurisdiction of Harris County Probate Court Number 4 over this dispute.[1]

3. The allegations relating to Bayless are minimal. The information identifying Bayless as a defendant is contained in paragraphs 21, 49, and 50 of the Complaint.[2] Paragraph 55 of the Complaint alleges that Bayless is an attorney who has practiced law in the Harris County Probate courts. Paragraph 56 alleges, without any facts to support it, that Bayless and the other named parties have engaged in a criminal enterprise somehow being conducted through Harris County Probate Court Number 4. Paragraph 59 makes a similar allegation, again without one shred of factual support. Bayless' name only otherwise appears at paragraph 124 of the Complaint, where an undefined conspiracy to alter the course of justice is alleged, and paragraph 131 of the Complaint, which contains only the factual basis for Plaintiffs' claim against Bayless. That so-called claim is one, however, which fails on its face.

---

[1] *See* paragraphs 113-115 of the Complaint which specifically complain about mediation being required in the probate proceeding.

[2] Paragraph 21 names Bayless as a Defendant. Paragraph 49 alleges the law firm of Bayless & Stokes to be an enterprise and a "legal entity associated with Harris County Probate Court...."

4. Plaintiffs' entire claim, as articulated in paragraph 131 of the Complaint, is based on Bayless' postponement of a hearing on the Motion for Partial Summary Judgment Bayless filed in the probate proceeding on behalf of her client, Carl Brunsting. That action is not wrongful and can not support a cause of action which can be asserted by these Plaintiffs under any circumstances. Nevertheless, that is Plaintiffs' only factual assertion supporting Plaintiffs' claims against Bayless. Bayless' postponement of the hearing on her own motion is not something that has any relationship to the Plaintiffs[3], and Plaintiffs have no standing to even complain about it. Nor have Plaintiffs alleged any causal relationship between any alleged injury, which they do not bother to define, and Bayless' postponement of the hearing on her own motion.

5. Bayless certainly did postpone the hearing on her own Motion for Partial Summary Judgment, but Plaintiffs have no right to even complain about Bayless' actions in representing her client, Carl Brunsting, much less sue Bayless for it. Thus, Plaintiffs' attempts to allege facts to support a claim against Bayless fall woefully short. Pursuant to Fed. R. Civ. P. 12(b)(6), Bayless asks this Court to dismiss Plaintiffs' action against her because it fails to state a claim upon which relief can be granted. Thus, even though Bayless admits she postponed her own hearing, Plaintiffs have no right to relief based on that fact. *Crowe v. Henry*, 43 F.3d 198, 203 (5th Cir. 1995).

6. Indeed, this Court could dismiss this entire case on its own initiative because Plaintiffs can not possibly prevail on what has been asserted, and it does not apepar to be something that can be cured by a new pleading. *Caroll v. Fort James Corp.*, 470 F.3d 1171, 1177 (5th Cir. 2006). Plaintiffs who are pro se parties have long and loudly made their disdain for lawyers known.

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[3] The allegation is even more amazing in light of the fact that one of the Plaintiffs has no relationship whatsoever to the Brunsting probate proceeding.

But that disdain does not support these outlandish claims. Plaintiffs have not provided one single fact to support their apparent position that Bayless is a person who is engaged in a pattern of racketeering activity connected to the acquisition, establishment, conduct, or control of an enterprise, and that Bayless participated in the operation or management of that enterprise. The fact that Bayless practices law and, in the course of her practice has represented another party involved in litigation with one of the Plaintiffs in Probate Court Number 4, does not even come close to supporting any cause of action, even if Plaintiffs do not like actions taken by Bayless in the course of her representation of her client, Carl Brunsting.

WHEREFORE, PREMISES CONSIDERED, Bayless prays that this motion be in all things granted and sustained; that the Court dismiss this action for failure to state a claim upon which relief can be granted; and that Bayless have such other and further relief, both general and special, legal and equitable, to which she may show herself entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

Bobbie G. Bayless
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Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Bobbie G. Bayless

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument has been served on this 7th day of September, 2016 via Telecopier or U.S. First Class Mail as follows:

Candace Louise Curtis
218 Landana Street
American Canyon, CA 94503
sent via U.S. First Class Mail

Rik Wayne Munson
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American Canyon, CA 94503
sent via U.S. First Class Mail

Cory Reed
Thompson Coe Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056
sent via telecopier

Jason Ostrom
Ostrom Morris PLLC
6363 Woodway, Suite 300
Houston, Texas 77057
sent via telecopier

Laura Beckman Hedge
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
sent via telecopier

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	§	
RIK WAYNE MUNSON	§	
	§	
Plaintiffs	§	
	§	**CASE NO. 4:16-cv-01969**
vs.	§	
	§	
CANDACE KUNZ-FREED, et al.,	§	
	§	
Defendants	§	

ORDER

Bobbie G. Bayless' Motion to Dismiss For Failure to State a Claim was considered, and the Court is of the opinion that the motion should be granted. It is therefore

ORDERED that Plaintiffs' claims against Bobbie G. Bayless are DISMISSED.

SIGNED this _____ day of _____, 2016.

_____
PRESIDING JUDGE

United States District Court
Southern District of Texas
ENTERED
September 09, 2016
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS	§	
RICK WAYNE MUNSON	§	
Plaintiffs	§	
	§	
VS.	§	
	§	**C.A. No. 4:16-cv-01969**
	§	
CANDACE KUNZ-FREED., *ET AL.*	§	
Defendants	§	

[PROPOSED] ORDER

Before the Court is the Unopposed Motion to File Responsive Pleading, filed by Defendant Jason B. Ostrom. The Motion is **GRANTED**. The deadline for Jason B. Ostrom to file a responsive pleading is hereby extended up to and including November 7, 2016. All other deadlines remain in full force and effect.

SO ORDERED.

Date: September 8, 2016.

ALFRED H. BENNETT
UNITED SATTES DISTRICT JUDGE

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S RULE 12(B)(6) MOTION TO DISMISS

Defendant Jill Willard Young files this Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) seeking the dismissal of all claims asserted by Plaintiffs against her.

Plaintiffs' pro se Complaint purports to assert almost fifty "claims" against more than fifteen defendants, who are lawyers, judges, and other legal professionals who practice in Harris County Probate Court No. 4. But those "claims" consist of fantastical allegations that some or all of the defendants are members in a secret society and "cabal" known as the "Harris County Tomb Raiders," which Plaintiffs also call "The Probate Mafia." *See, e.g.*, Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in "Poser Advocacy," supposedly an "exploitation opportunity" to "hijack" "familial wealth." *Id.* at ¶¶ 95–99. In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Against, Ms. Young, Plaintiffs allege "causes of action" for:

- "18 U.S.C. § 1962(d) the Enterprise" (*see* Complaint, at § IV, ¶¶ 35–58);
- "The Racketeering Conspiracy 18 U.S.C. § 1962(c)" (*see id.* at ¶¶ 59–120);

- Three claims for "Honest Services 18 U.S.C. § 1346 and 2" (*see id.* at ¶¶ 121, 122, 123);
- "Wire Fraud 18 U.S.C. § 1343 and 2" (*see id.* at ¶ 123);
- "Fraud 18 U.S.C. § 1001 and 2" (*see id.* at ¶ 123);
- "Theft/Hobbs Act Extortion Texas Penal Codes § 31.02 & 3.03 and 18 U.S.C. § 1951(b)(2) and 2" (*see id* at ¶ 123); and
- Three conspiracy claims for "Conspiracy to Obstruct Justice 18 U.S.A.C. § 371" (*see id* at ¶ 123); "Conspiracy Re: State Law Theft/Extortion – in Concert Aiding and Abetting" (*see id.* at ¶ 132); and "Conspiracy to Violate 18 USC §§242 and 2, & 42 U.S.C. §§983 and 1985) (*see id.* at ¶ 159).

But despite pleading more than ten "claims" against Ms. Young, Plaintiffs make no assertion that she performed even a single wrongful act. And instead of pleading the elements of legal causes of action and supporting those elements with allegations of fact—the minimum standard of pleading required by Rule 8—Plaintiffs' Complaint reads more like an excerpt from *The DaVinci Code*, rattling off fantastical assertions with no connection to plausible facts or valid causes of action. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "**plead[] factual content** that allows the court **to draw the reasonable inference** that the defendant is liable for the misconduct alleged") (emphasis added); *Neitzke v. Williams*, 490 U.S. 319, 325 & 328 (1989) (holding that a complaint is "frivolous" and should be dismissed when the factual allegations are "fanciful," "fantastic," or "delusional").

Plaintiffs assert no factual content sufficient to maintain any cause of action against Ms. Young. Instead, Plaintiffs' allegations are implausible, fanciful, and delusional. The Complaint should be dismissed with prejudice.

FACTUAL BACKGROUND

Plaintiffs' allegations appear to relate to a probate matter in Harris County Probate Court, which the Plaintiffs call "Curtis v. Brunsting" (*see* Complaint ¶ 110), although no cause number is ever mentioned and no court is ever identified.

The only matter in which Ms. Young was ever involved with Plaintiff Curtis was *In re: Estate of Nelva E. Brunsting*, No. 412.249 (Harris County Probate Court No. 4) (the "*Brunsting* matter"). Plaintiff Munson was not party to that matter. In the *Brunsting* matter, Ms. Young was attorney for Greg Lester, who had been appointed by Probate Court No. 4 as temporary administrator,[1] to assist Mr. Lester in preparing a written report to the Court.

All of the actions taken by Ms. Young in that matter were in her role as attorney to Mr. Lester. Ms. Young never had a fiduciary relationship with either Plaintiff, and she did not represent any other party in the *Brunsting* matter. Plaintiffs make no allegations to the contrary.

ARGUMENT

Plaintiffs' claims should be dismissed with prejudice. First, Ms. Young, as attorney only for Mr. Lester, is entitled to immunity from suit under Texas law. *See Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) ("**[A]ttorneys are immune from civil liability to non-clients** for actions taken in connection with representing a client in litigation.") (emphasis added).

Second, Plaintiffs' RICO claims fail for two independent reasons:

(1) The injuries Plaintiffs allegedly suffered were not proximately caused by a violation of RICO, as is required to bring a civil RICO action under 18 U.S.C. § 1964(c);

[1] *See* Exhibit A, Order Appointing Temporary Administrator Pending Contest Pursuant to Texas Estates Code § 452.051, *In re: Estate of Nelva E. Brunsting*, No. 412.249 (Harris County Probate Court No. 4 Jul. 24, 2015).

(2) Plaintiffs have failed to plead a "racketeering activity," namely by not pleading the RICO predicate acts of mail and wire fraud with the particularity required by Fed. R. Civ. P. 9(b);

Third, Plaintiffs' Complaint should be dismissed because they have not pleaded a plausible claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "**plead[] factual content** that allows the court **to draw the reasonable inference** that the defendant is liable for the misconduct alleged") (emphasis added).

Fourth, Plaintiffs' Complaint should be denied because it is frivolous, delusional, and implausible. *See Neitzke v. Williams*, 490 U.S. 319, 325 & 328 (1989) (holding that a complaint is "frivolous" and should be dismissed when the factual allegations are "fanciful," "fantastic," or "delusional").

Fifth, Plaintiffs' "Hobbs Act," "Wire Fraud," "Fraud under 18 U.S.C. § 1001," and "Honest Services" claims fail because those statutes do not create private causes of action. *See Moore v. Garner*, No. Civ.A. 6:04-CV-79, 2005 WL 1022088, at *4 (E.D. Tex. 2005).

Sixth, Plaintiffs attempt to impermissibly plead collectively does not satisfy the federal pleading requirements.

I. Under Texas law, Ms. Young is immune from suit.

Under Texas law, "attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)).

"Even conduct that is 'wrongful in the context of the underlying suit' is not actionable if it is 'part of the discharge of the lawyer's duties in representing his or her client.'" *Id.* (quoting *Toles v. Toles*, 113 S.W.3d 899, 910-11 (Tex. App.—Dallas 2003, no pet.)); *see also Highland*

Capital Mgmt., LP v. Looper Reed & McGraw, P.C., No. 05-15-00055-CV, 2016 WL 164528, at *6 (Tex. App.—Dallas Jan. 14, 2016, pet. filed) (dismissing conspiracy and breach of fiduciary claims asserted by party against opposing attorneys because actions alleged were "kinds of actions that are part of the discharge of an attorney's duties in representing a party in hard-fought litigation" (citing *Byrd*, 467 S.W.3d at 482)).

Instead, in Texas, "attorney immunity is properly characterized as a true immunity from suit," and not merely "a defense to liability." *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346–48 (5th Cir. 2016). This immunity "not only insulates the [attorney] from liability, but also prevents the [attorney] from being exposed to discovery and/or trial." *Id.* at 346.

The only exceptions to an attorney's "true immunity from suit" are if an attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Byrd*, 467 S.W.3d at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)). But a plaintiff cannot evade attorney immunity by simply "labeling an attorney's conduct 'fraudulent.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406).

Here, there are no allegations that Ms. Young engaged in any conduct that was "entirely foreign to the duties of an attorney." *Id.* at 482. Nor do Plaintiffs allege Ms. Young was engaging in conduct that did not involve the provision of legal services. *Id.* Indeed, Plaintiffs do not allege **any** conduct of Ms. Young that they claim was wrongful. Thus, Ms. Young is protected by Texas's doctrine of attorney immunity, and this suit against her must be dismissed.

II. Plaintiffs' RICO claims fail.

Plaintiffs' RICO claims, alleging violations of § 1962, should be dismissed under Fed. R. Civ. 12(b)(6) for two independent reasons:

(1) The injuries Plaintiffs allegedly suffered were not proximately caused by a violation of RICO, as is required to bring a civil RICO action under 18 U.S.C. § 1964(c);

(2) Plaintiffs have failed to plead a "racketeering activity," namely by not pleading the RICO predicate acts of mail and wire fraud with the particularity required by Fed. R. Civ. P. 9(b);

Each reason is discussed below.

A. Plaintiffs have not shown they have standing under § 1964(c) to assert civil RICO claims against Ms. Young.

Plaintiffs' RICO claims should be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiffs have not pled facts showing they have standing under § 1964(c) to assert a civil RICO claim.

The RICO statute states "[a]ny person injured in his business or property by reason of a violation of [RICO] may sue." 18 U.S.C. § 1964(c). And a RICO plaintiff must show he has standing to sue. *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 606 (5th Cir. 1998). To plead standing, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury." *Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (citing *Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)); *Holmes v. Securities Investor Protection Corp.*, 559 U.S. 1, 9-10 (1992) ("[P]roximate cause is thus required," which means there must be "some direct relation between the injury asserted and the injurious conduct alleged."). The focus of proximate cause analysis is "directness"—whether "the injury or damage was either a direct result or a reasonably probable consequence of the act." *Plambeck*, 802 F.3d at 676; *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 459, 460 (2006) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries."). Plaintiffs do not plead facts showing

they suffered any financial loss that directly resulted from any alleged RICO violation by Ms. Young. *See Gil Ramirez Grp., L.L.C.*, 786 F.3d at 408.

In *Firestone*, the beneficiaries of the Firestone family estate and trust asserted RICO claims against the executor and trustee. *Firestone v. Galbreath*, 976 F.2d 279, 282 (6th Cir. 1992). The court affirmed the district court's dismissal of the RICO claims for lack of standing, noting that the estate, not the beneficiaries, suffered the direct harm. *Id.* at 285 (citing *Holmes*, 559 U.S. at 9-10). The alleged harm inflicted by the executor and trustee flowed only indirectly to the beneficiaries through the harms inflicted upon the decedent and her estate. *Id.* (reasoning that the beneficiaries were similar to shareholders who sue for acts aimed at a corporation—"the shareholder's injury is only indirect because the decrease in the value of the corporation precipitates the drop in the value of the stock") (citing *Gaff v. FDIC*, 814 F.2d 311 (6th Cir. 1987); *Warren v. Manufacturer's Nat'l Bank*, 759 F.2d 542 (6th Cir. 1985)). Thus, the *Firestone* beneficiaries lacked direct injury, and therefore standing, to pursue their individual RICO claims. *Id.*

Like the aggrieved beneficiaries in *Firestone*, Plaintiffs here could, at most, only suffer indirect harm through their allegations of "poser advocacy" by some secret society that allegedly includes Ms. Young. The rationale underlying the direct relationship requirement is plainly applicable here, as the estates "can be expected to vindicate the laws by pursuing their own claims." *See Holmes*, 503 U.S. at 269–70 (holding broker dealers could be relied upon to bring suit against alleged securities fraud co-conspirators); *Anza*, 547 U.S. at 460 ("If the allegations are true [that defendants are defrauding the State of New York], the State can be expected to pursue appropriate remedies."). In short, by alleging that Ms. Young caused harm to the estates through "poser advocacy," which in turn caused harm to Plaintiffs, Plaintiffs improperly ask the

Court to go "beyond the first step."[2] *See Hemi Group, LLC v. City of New York, N.Y.*, 559 U.S. at 10 ("Because the City's theory of causation requires us to move well beyond the first step, that theory cannot meet RICO's direct relationship requirement.").

Because Plaintiffs' have not shown their injuries were directly caused by a violation of RICO, they have failed to satisfy the proximate causation requirement necessary to establish RICO standing. Thus, Plaintiffs' RICO claims should be dismissed.

B. Plaintiffs have not satisfied Rule 9(b) because they have not pleaded facts showing Ms. Young engaged in a "racketeering activity."

Plaintiffs' RICO claims should also be dismissed under Fed. R. Civ. P. 9(b) because the allegations do not show Ms. Young engaged in any "racketeering activities" sufficient to trigger the RICO statute.

Under Rule 9(b), fraud claims must meet the heightened pleading requirements of Rule 9(b), which requires a plaintiff to plead allegations of fraud "with particularity." FED. R. CIV. P. 9(b); *Shandong Yinguang Chem. Indus. Joint Stock Co. v. Potter*, 607 F.3d 1029, 1032 (5th Cir. 2010) (per curiam) ("Rule 9(b) requires the 'who, what, when, where, and how' to be laid out.") (citation omitted); *ABC Arbitrage Plaintiffs Grp. v. Tchuruk*, 291 F.3d 336, 350 (5th Cir. 2002) (to satisfy the particularity standard, a party must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent") (internal quotation marks and citations omitted).

By imposing a "higher, or more strict, standard than . . . basic notice pleading" on fraud claims, *Sushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993), Rule 9(b) ensures that a defendant "has sufficient information to formulate a defense; it protects defendants from harm to

[2] It is worth noting that, although Plaintiffs allege that Defendants somehow "hijacked" estates by recouping attorneys' fees for time that was merely spent as sham advocacy, Ms. Young has yet to be paid a single cent for her representation of Temporary Administrator Lester.

their reputation and goodwill; it reduces the number of frivolous suits; and, it prevents plaintiffs from filing a claim and then attempting to uncover unknown wrongs through discovery." *United States ex. rel. Foster v. Bristol-Myers Squibb Co.*, 587 F. Supp. 2d 805, 819 (E.D. Tex. 2008).

RICO claims require that a defendant commit a "pattern of racketeering activity." *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). A "[r]acketeering activity consists of two or more predicate criminal acts" listed in 18 U.S.C. § 1961(1). *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007) (citation omitted); *Zastrow v. Houston Auto Imports Greenway Ltd.*, 789 F.3d 553, 559 (5th Cir. 2015). The predicate acts can be certain state or federal crimes. *See* 18 U.S.C. § 1961(1). But theft, common law fraud, and other garden-variety torts are not racketeering activities. *See St. Germain v. Howard*, 556 F.3d 261, 263 (5th Cir. 2009) (holding plaintiffs pled facts showing nothing more than "violations of the rules of professional responsibility," not "the requisite predicate *criminal* acts under RICO"); *Toms v. Pizzo*, 4 F. Supp. 2d 178, 183 (W.D.N.Y.), *aff'd*, 172 F.3d 38 (2d Cir. 1998) ("[S]imple theft is not one of the crimes constituting a predicate act for purposes of establishing a pattern of racketeering activity."); *Fleet Credit Corp. v. Sion*, 893 F.2d 441, 445 (1st Cir. 1990) ("[A]cts of common law fraud that do not implicate the mails (or the wires) do not constitute 'racketeering activity'"); *Stangel v. A-1 Freeman N. Am., Inc.*, No. CIV.A. 3:01-CV-2198M, 2001 WL 1669387, at *1 (N.D. Tex. Dec. 27, 2001) ("breach of a settlement agreement, interference with a contract, conversion of property, and intentional infliction of emotional distress" are not racketeering activities).

Plaintiffs have made no assertion of any predicate acts of Ms. Young they claim constitute RICO predicate acts, although they vaguely assert "causes of action" for wire fraud,

mail fraud, and Hobbs Act violations.[3] But to adequately plead mail fraud, wire fraud, or violations of the Hobbs Act, Plaintiffs must allege "the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Tel-Phonic*, 975 F.2d at 1139 (emphasis added) (citing Fed. R. Civ. P. 9(b)). RICO claims must be dismissed when they rest on predicate fraud claims that are not pled with particularity. *See id.*; *Elliott*, 867 F.2d 877, 882 (5th Cir. 1989); *St. Germain*, 556 F.3d at 263. Here, Plaintiffs have not pled the time, place, or content of any alleged misrepresentations by Ms. Young, nor have they pled what Ms. Young obtained by making the alleged misrepresentation.

In sum, Plaintiffs fail to state even a single individualized fraud allegation against Ms. Young. *See Del Castillo*, 2015 WL 3833447, at *6 ("A complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct."); *Dimas*, 2010 WL 1875803, at *8 (dismissing RICO claims, in part, because the complaint failed to specify the role each Defendant played in the alleged scheme). Thus, because Plaintiffs have failed to plead facts showing Ms. Young engaged in a "racketeering activity," their RICO claims should be dismissed.

III. Plaintiffs have not satisfied Rule 12(b) because they have not pleaded a plausible claim for relief.

Plaintiffs' RICO claims should also be denied because the Complaint fails to state a plausible, valid claim for relief under the RICO statute.[4] Plaintiffs rely on implausible and conclusory allegations, unsupported by any factual assertions whatsoever. *Ashcroft v. Iqbal*, 556

[3] As shown in Section C, Plaintiffs' wire fraud, mail fraud, and Hobbs Act claims fail, because they cannot be asserted as private causes of action.

[4] As shown in Part V of this Section, all of the "causes of action" Plaintiffs assert other than RICO do not afford a private right of action. Thus, this section focuses on Plaintiffs' failure plead a valid RICO claim.

U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "**plead[] factual content** that allows the court **to draw the reasonable inference** that the defendant is liable for the misconduct alleged") (emphasis added). Plaintiffs' Complaint pleads no factual content to support any of their fantastical allegations.

To survive a Rule 12(b)(6) motion to dismiss, Plaintiffs must plead enough facts "to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). Plaintiffs' claim is "facially plausible" only if they plead facts that allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Further, the Court is not bound to accept as true legal conclusions couched as factual allegations. *Id.* at 678–79 (holding that a complaint "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions"). And "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679. In other words:

> A legally sufficient complaint must establish more than a "sheer possibility" that plaintiffs' claim is true. It need not contain detailed factual allegations, but it must go beyond labels, legal conclusions, or formulaic recitations of the elements of a cause of action. . . . . If there are insufficient factual allegations to raise a right to relief above the speculative level, . . . the claim must be dismissed.

Martin v. Magee, CIV.A. 10-2786, 2011 WL 2413473, at *4 (E.D. La. June 10, 2011) (internal quotations and citations omitted) (citing *Iqbal* and *Twombly*).

Plaintiffs' Complaint does not plead enough facts to state a plausible claim for relief against Ms. Young. Other Courts in this jurisdiction have rejected identical claims. *See Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at *2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.). In *Freeman*, two pro se plaintiffs alleged:

> Plaintiff claims a probate court enterprise comprised of judges and lawyers who conspired against pro se litigants, including himself. He claims that this enterprise has "virtually looted" his mother's homestead through the guardianship proceeding and denied him due process of law. Even if true, these allegations fail to state a "racketeering activity" because Plaintiff has failed to allege sufficient facts to raise a colorable claim that any violation of one of the numerous criminal statutes constituting racketeering activity has occurred. In light of the absence of any allegation that raises the possibility of a RICO violation, Plaintiff's claim under RICO must be DISMISSED.

Id. at *2 (internal footnotes omitted). Here, Plaintiffs' Complaint—devoid of any well-pleaded facts—consists of nothing more than conclusory conspiracy theories. It should be dismissed.

IV. Plaintiffs' Complaint is frivolous and delusional.

Plaintiffs' Complaint should also be denied because it is frivolous and delusional. This is a wholly separate basis on which the Court should dismiss the Complaint, through this Court's "inherent authority to dismiss a *pro se* litigant's frivolous or malicious complaint . . . ." *See Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at *4 (N.D. Tex. Oct. 25, 2010) ("District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint *sua sponte* even when the plaintiff has paid the requiring filing fee."); *see also Neitzke v. Williams*, 490 U.S. 319, 325 & 328 (1989) (holding that a complaint is "frivolous" and should be dismissed when the factual allegations are "fanciful," "fantastic," or "delusional"). To determine "whether a plaintiff's complaint is frivolous, district courts must determine whether the facts alleged are 'clearly baseless,' meaning that the allegations are 'fanciful,' 'fantastic,' or 'delusional.'" *Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at *5 (N.D. Tex. Oct. 25, 2010) (citing *Denton v. Hernandez*, 504 U.S. 25, 32–33, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992)).

Here, Plaintiffs' Complaint resorts to concocting conspiracy theories and hypothesizing the existence of shadow organizations engaging in "poser advocacy" through a cabal of probate mafiosos. Other courts in this Circuit have held that almost identical allegations made by pro se

litigants should be dismissed *and* were sanctionable. *See Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at *2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148 (W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff).

Plaintiffs' allegations are fanciful, fantastic, and delusional—at best. They also appear to constitute an attempt by Plaintiffs to seek revenge for being on the losing end of trust and estate determinations that were already fully litigated in Texas state court. But whether Plaintiffs' motivations in filing the Complaint are one or the other (or anything in between), their allegations should be dismissed.

V. Plaintiffs' claims for "Hobbs Act," "Wire Fraud," "Fraud under 18 U.S.C. §1001," and "Honest Services" fail because those statutes do not create private causes of action.

The Plaintiffs purport to assert claims against Ms. Young for violation of the Hobbs Act, Wire Fraud, "Fraud under 18 U.S.C. § 1001," and "Honest Services," but those acts do not create private causes of action. Thus, those claims should all be dismissed.

A. The Hobbs Act does not create a private cause of action.

The Hobbs Act does not create a private cause of action. *Moore v. Garner*, No. Civ.A. 6:04-CV-79, 2005 WL 1022088, at *4 (E.D. Tex. 2005) ("Nor does the Hobbs Act create a private cause of action") (citing *Wisdom v. First Midwest Bank*, 167 F.3d 402, 408 (8th Cir. 1999)). This is settled law. *See, e.g., Campbel v. Austin Air Systems, Ltd.*, 423 F. Supp. 2d 61, 72 (W.D.N.Y. September 29, 2005) ("[F]ederal courts have consistently found that the Hobbs Act does not support a private cause of action."); *Barge v. Apple Computer*, No. 95 CIV. 9715 (KMW), 1997 WL 394935, at *1 (S.D.N.Y. July 15, 1997), *aff'd*, 164 F.3d 617 (2nd Cir. 1998) ("[C]ourts that have considered this question have consistently found that the Hobbs Act does

not support a private cause of action."); *John's Insulation, Inc. v. Siska Constr. Co., Inc.*, 774 F. Supp. 156, 163 (S.D.N.Y. 1991) ("There is no implied private cause of action under the Hobbs Act.").

Thus, Plaintiffs' Hobbs Act claim against Ms. Young fails.

B. The Wire Fraud statute does not create a private cause of action.

The wire fraud statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) (citing *Napper v. Anderson, Hensley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974) for its holding that there is "no private cause of action under the mail-and wire-fraud statutes, 18 U.S.C. §§ 1341 and 1343"); *see also Morse v. Stanley*, 4:11CV230, 2012 WL 1014996, at *2 (E.D. Tex. Mar. 23, 2012) ("18 U.S.C. § 1343 is a criminal statute pertaining to wire fraud and does not provide Plaintiff with a private cause of action."); *Benitez v. Rumage*, CIV.A. C-11-208, 2011 WL 3236199, at *1 (S.D. Tex. July 27, 2011) (the wire fraud statute "do[es] not provide a private cause of action").

Thus, Plaintiffs' Wire Fraud act claim against Ms. Young fails.

C. The claim for "Fraud under 18 U.S.C. §1001" is not a private cause of action.

Plaintiffs' claim for "Fraud 18 U.S.C. § 1001" fails, as well, because that statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) ("The Thompsons assert causes of action under **18 U.S.C. §§ 1001**, 1010, 1014, 1341, 1343, and 1344. **These federal criminal statutes do not provide a private cause of action**.") (emphasis added). Again, this is settled law. *See Blaze v. Payne*, 819 F.2d 128, 130 (5th Cir. 1987) ("Finding no congressional intent to create a private right of action under § 1001(b), Blaze has failed to state a claim upon which relief could be granted, and the district court's grant of summary judgment was proper."); *Grant*

v. CPC Logistics Inc., 3:12-CV-200-L BK, 2012 WL 601149, at *1 (N.D. Tex. Feb. 1, 2012), *report and recommendation adopted*, 3:12-CV-200-L, 2012 WL 601128 (N.D. Tex. Feb. 23, 2012) ("Federal courts have repeatedly held that **violations of criminal statutes, such as 18 U.S.C. §§ 1001**, 1505 and 1621, **do not give rise to a private right of action**.") (emphasis added); *Parker v. Blake*, CIV. A. 08-184, 2008 WL 4092070, at *3 (W.D. La. Aug. 29, 2008) ("Section 1001 provides criminal penalties for persons convicted of fraud or false statements during the course of certain dealings with the federal government . . . . As above, this criminal statute, were it applicable to allegations made by plaintiff still would not create a private civil cause of action or entitlement to monetary relief thereunder."); *Doyon v. U.S.*, No. A-07-CA-977-SS, 2008 WL 2626837, at *4 (W.D. Tex. June 26, 2008) (holding that there is "no private cause of action under 18 U.S.C. §§ 1001").

Thus, Plaintiffs' claim for "Fraud 18 U.S.C. § 1001" fails.

D. The claim for "Honest Services" is not a private cause of action.

Plaintiffs allege three claims for "honest services," based on 18 U.S.C. § 1346. *See* Complaint, at ¶¶ 121, 122, 123. But 18 U.S.C. § 1346 does not create a private cause of action, either. *See Eberhardt v. Braud*, 16-CV-3153, 2016 WL 3620709, at *3 (C.D. Ill. June 29, 2016) ("Plaintiff attempts to bring a private right of action under 18 U.S.C. § 1346 and 18 U.S.C. § 1951, but those criminal statutes do not contain an express or implied private right of action."); Alford v. S. Gen. Ins., 7:12-CV-00273-BR, 2013 WL 1010584, at *2 (E.D.N.C. Mar. 14, 2013) (holding that a "claim for honest services fraud under 18 U.S.C. § 1346" must be dismissed "pursuant to Rule 12(b)(6) because a private right of action for a violation of that law does not exist"); *Hooten v. Greggo & Ferrara Co.*, CIV. 10-776-RGA, 2012 WL 4718648, at *6 (D. Del. Oct. 3, 2012) ("18 U.S.C. § 1341 and § 1346 . . . are found in the federal criminal code. Neither § 1341 or § 1346 allow for a private cause of action.").

Thus, Plaintiffs' three claims against Ms. Young for "Honest Services" fail.

VI. Plaintiffs rely on impermissible collective pleading.

"A complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct." *In re Parkcentral Glob. Litig.*, 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012) ("It is impermissible to make general allegations that lump all defendants together; rather, the complaint must segregate the alleged wrongdoing of No. 1 from another."). And the pleading requirements of Rule 9(b) likewise demand **specific** and **separate** allegations against each defendant. *See Dimas v. Vanderbilt Mortg. & Fin., Inc.*, No. C-10-68, 2010 WL 1875803, at *8 (S.D. Tex. May 6, 2010) ("[W]hile the Complaint makes several general allegations of fraud, it often fails to specify the role each Defendant played in the alleged scheme."); *Unimobil 84, Inc. v. Spurney*, 797 F.2d 214, 217 (5th Cir. 1986) (affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made").

Here, Plaintiffs offer no individualized allegations about any wrongful conduct they allege against Ms. Young. Instead, Plaintiffs' vague and fanciful pleadings are lobbed at all Defendants, with no discernible specific or separate allegations for Ms. Young. This is insufficient to state a claim.

CONCLUSION

For the reasons stated above, this Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: September 15, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Motion to Dismiss has been served on September 15, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell

EXHIBIT A

07/24/2015 13:43:P0046

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY ADMINISTRATOR PENDING CONTEST PURSUANT TO TEXAS ESTATES CODE 452.051

On March 23, 2015, the Court heard and approved Carl Henry Brunsting's Application to Resign as Independent Executor. On July 21, 2015 the Court heard and considered CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE; Anita Kay Brunsting's OBJECTION TO CANDACE CURTS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE; AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR, RESPONSE TO CARL BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS'S APPLICATION FOR APPOINTMENT AS SUCCESSOSR EXECUTOR; Carl Brunsting's OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR; and Candace Curtis' RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTINGS APPLICATION FOR APPOINTMENT.

The Court finds that the Court has jurisdiction and venue over Decedent's Estate; that it is in the best interest of the Estate that a personal representative be immediately appointed; and that the parties have reached an agreement regarding the appointment of a Temporary Administrator Pending Contest with limited powers, which was announced on the record at said hearing, the terms of which are substantially as follows:

1. GREG LESTER would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed Temporary Administrator

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Pending Contest of this Estate with limited powers to evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC, 2) Anita Kay Brunsting f/k/a Anita Kay Riley, Individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Anita Kay Brunsting Personal Asset Trust; and 3) Amy Ruth Brunsting f/k/a Amy Ruth Tschirhart, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedcent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Tschirhart Personal Asset Trust; and 4) Carole Ann Brunsting, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust. Greg Lester, Temporary Administrator Pending Contest will report to the Court regarding the merits of these claims on or before the expiration of this Order. This Order shall expire 180 days after the date that it is signed.

2. Amy Brunsting and Anita Brunsting, as the Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust agree to advance funds to the Estate of Nelva E. Brunsting (the "Estate") to pay all court approved fees and expenses of the Temporary Administrator Pending Contest.

3. The Temporary Administrator Pending Contest has the authority to seek a continuance in the "District Court Case" in which the Estate is a plaintiff, of the hearing on the Motion for Summary Judgment current scheduled for July 31, 2015 and to seek continuance of the October, 2015 trial setting in that matter.

4. Amy Brunsting and Candace Louise Curtis each agree to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each Estate, during the pendency of the Temporary Administration of this Estate.

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IT IS THEREFORE ORDED that Greg Lester is hereby appointed Temporary Administrator Pending Contest of this Estate and shall give a cash Bond in the amount of $100.00 (On Hundred Dollars), conditioned as required by law; that the Temporary Administration shall continue until the expiration of 180 days after the date of this Order, or as may be further ordered by this court; that the Clerk of this Court shall issue Letters of Temporary Administration when the Temporary Administrator has qualified according to law; and that the Temporary Administrator shall have the powers enumerated by the agreement of the parties as restated above.

Signed July 23, 2015.

Christine Butts, Judge
Harris County Probate Court No. 4

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HARRIS COUNTY, TEXAS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	Civil Action No. 4:16-cv-01969
	§	
v	§	The Honorable Alfred Bennett
	§	
Kunz-Freed, et al	§	Jury Trial Requested
Defendants	§	

PLAINTIFFS' ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT

1. Plaintiffs in the above titled action brought claims under the Racketeer Influenced Corrupt Organization (RICO) statutes, both individually and as private attorneys general on behalf of the public trust, on July 5, 2016, in the Southern District of Texas.

2. On September 7, 2016, Defendants Albert Vacek Jr. and Candace Kunz-Freed, collectively V&F, filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) and F.R.C.P. Rule 9(b), Doc #19, and Rule 12(b)(1) Doc #20. The 12(b)(1) motion was pled as both a facial and factual challenge.

3. Also on September 7, 2016, Defendant Bobbie Bayless filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), Doc #23.

4. Plaintiffs, in response to these challenges, herein incorporate by reference the attached Motions as Memorandums of Points and Authorities in support of the above-referenced complaint, as if those motions had been fully set forth within the original complaint.

5. The following motions are presented as Memorandums, to supplement the Rule 8(a) sufficient complaint.

6. Plaintiffs hereby incorporate these motions as memorandums under authority of Federal Rule 15(a), for the purpose of satisfying the heightened factual pleading standards of Rule 9(b).

7. The following memorandums are submitted in answer to Defendants' challenges to Plaintiffs' claims of facts and are hereby incorporated by this reference as an addendum, in addition to Plaintiffs' original complaint, and do not constitute an amendment.

1. Plaintiff Candace Louise Curtis' Motion for Sanctions Pursuant to Rule 11(b) Case 4:12-cv-00592 Document 120 Filed in TXSD on 08/05/16 and;

2. Plaintiff Candace Louise Curtis Motion for Relief from Order Pursuant to Fed.R.CIV.P. 60(b)(3), 60(b)(6) and 60(d)(3), Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16

Respectfully submitted,

Date: September 15, 2016

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2016, a true and correct copy of the foregoing was served through the Court's ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§ § §	
v	§ §	Civil Action No. 4:12-cv-00592
ANITA KAY BRUNSTING, et al Defendants	§ §	

PLAINTIFF CANDACE LOUISE CURTIS'
MOTION FOR RELIEF FROM ORDER PURSUANT TO FED. R. CIV. P. 60(b)(3), FED. R. CIV. P. 60(b)(6) AND FED. R. CIV. P. 60(d)(3)

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MOTION FOR RELIEF

1. Plaintiff Candace Louise Curtis (Curtis) respectfully moves this honorable Court, pursuant to Fed. R. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6), and Fed. R. Civ. P. 60(d)(3), praying for relief from this Court's order of July 22, 2014, approving Jason Ostrom's Motion for leave to file an amended complaint and Order to Remand the above captioned matter to Harris County Probate Court No. 4[1].

[1] Document Nos. 107, 111 and 112 in this Court's Record

2. This Motion relates to intentional misrepresentations made by Counsel before this Court, in effort to secure a remand to state court, as revealed by conduct in state court after that relief was granted.

I. GROUND FOR PETITION

3. The above captioned matter was remanded from this Court to the Harris County Probate Court pursuant to a stipulation between the parties, accepted and approved by this Honorable Court.[2] That stipulation involved Plaintiff amending her complaint to pollute diversity in order to facilitate a remand and, in return, Defendants agreed the federal injunction and all orders of this Court would remain in full force and effect as if there had been no remand. (Exhibit 1: E1-E4)

4. Counsel represented to this Court that the purpose for the remand was to afford complete relief to the parties. Conduct by Defendants, the attorneys, and the state Court manifest the exact opposite intentions. Once in the state probate Court, Defendants immediately ignored this Court's rulings and the injunction, as if the injunction had never been issued, and now act as if the matter had never been before this honorable Court at all.

5. Defendants perpetrated a fraud upon this Court and upon Petitioner, in that they had no intentions of honoring the remand agreement, but promised to do so for the purposes of evading this Court's judgments and orders, thereby depriving Plaintiff of a legitimate judicial forum.

[2]Harris County Probate Court No. 4, case: 412249, 412249-401, 412249-402 6/6/2014 order granting Plaintiff's motion to remand, signed May 15, 2014 PBT-2014-188311

II. JURISDICTION AND STATUTES OF LIMITATIONS

6. 28 U.S.C. §1447(d) does not prevent a district court from vacating a remand order that was obtained through fraud or misrepresentation.[3] The circumstances in which an order may be vacated pursuant to Rule 60(b) are as reasonably applied to remand orders as to any other orders procured by fraud.

7. Vacatur in this case would not be adverse to the goals of §1447(d) and would preserve the integrity of federal judicial proceedings.

8. A federal Court has inherent jurisdiction to vindicate its dignity and authority and such power has been held to be organic, requiring neither statute nor rule for its invocation.

9. This Court specifically retained jurisdiction to enforce the remand agreement, as reflected in the remand order.

10. The twelve month statute of limitations applicable to F.R.C.P. Rule 60(b)(3) does not apply in this case, as this Court retained jurisdiction through the end of the controversy between these parties by stipulation, as reflected in the Remand Order.

11. Even without the Court's order for continuing jurisdiction there is no statute of limitations applicable to F.R.C.P. Rule 60(b)(6) and 60(d)(3) relief, as those statute sections follow the general law of voids.

12. Fraud vitiates everything it touches and a judgement or order procured by intentional deception is recognized by these rules as void ab initio.

[3]Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014) (en banc).

III. STANDARD OF REVIEW

13. Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for "(1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of judgment."

14. Motions filed under subsection (1), (2) or (3) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding" from which relief is sought, while those filed under subsection (6) must instead be made "within a reasonable time". (Fed. R. Civ. P. 60(c)(l))

15. The standard of review on orders granting or denying Rule 60(b) relief is abuse of discretion. For findings of fact the standard of review is clear error[4] and for conclusions of law the standard for review is de novo.

16. Rule 60 motions should only be granted where (i) extraordinary circumstances exist and (ii) there is a showing that justice demands it.

17. Plaintiff is not a disgruntled litigant against whom adverse judgements have been entered. Plaintiff is a litigant whose motions cannot be answered by the Defendants or ruled against by the Court without reversal on appeal. Plaintiff is a litigant against whom the probate Court and the attorney officers of that Court have conspired against in effort to cheat justice and that is a matter of record.

18. A Motion under Rule 60(b)(6) brought within 120 days of obtaining proof of a fraud upon the federal Court is timely and the facts supporting this motion epitomize the very concept of extraordinary circumstances. Justice clearly demands vacatur as there is no other

[4] Federal Rule of Civil Procedure 52(a)

remedy available to Plaintiff within the context of this lawsuit and equity will not suffer a right to go without remedy.

19. Plaintiff seeks an honest judicial forum in which to pursue her claim of right, nothing more and nothing less.

IV. NATURE AND STAGE OF THE PROCEEDINGS

20. Plaintiff Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.

21. On March 6, 2012 Vacek & Freed staff attorney Bernard Mathews, appearing under the letterhead "Green and Mathews", filed a motion for an emergency order accompanied by a false affidavit signed and verified by Defendant Amy Brunsting. (Exhibit 18: E1249-E1251)

22. In reliance upon the material misrepresentations contained therein, on March 8, 2012, this Honorable Court dismissed Plaintiff Curtis' Pro se Petition sua sponte under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal.

23. On April 2, 2012 Vacek & Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Clerk at the insistence of Carl Brunsting's attorney Bobbie Bayless.

24. On March 9, 2012 Carl Brunsting, individually and on behalf of the estate of Nelva Brunsting, filed a petition to take depositions before suit in the Harris County District Court.

25. On January 9, 2013 the Fifth Circuit Court of Appeals in a unanimous decision reversed and remanded to this Court.[5] Plaintiff Curtis immediately filed for a protective order.

[5] Candace Curtis v Anita Brunsting et al., 710 F.3d 406

26. On January 29, 2013 Carl Brunsting filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court, as Executor of the estate of Nelva Brunsting.

27. On April 9, 2013 this Honorable Court issued a protective order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval. (Exhibit 2: E5-E9)

28. Also on April 9, 2013 Carl Brunsting filed suit against Amy, Anita and Carole Brunsting in Harris County Probate Court No. 4, individually (412249-401) and as executor of the estate of Nelva Brunsting (412249).

29. Carl Brunsting's attorney, Bobbie Bayless, filed estate claims in the Harris County District Court against Candace Freed and Vacek & Freed P.L.L.C. alleging conspiracies involving Anita, Carole and Amy Brunsting, and then filed suit against Anita, Carole and Amy Brunsting in the Harris County Probate Court alleging a conspiracy involving Candace Freed. Not only did Bayless file claims against co-conspirators in separate Courts, she named federal Plaintiff Curtis a nominal defendant in her probate Court complaint.

30. Hearing on Plaintiff Curtis' Application for Order to Show Cause in the federal Court was held on or about October 2, 2013, however, due to a medical emergency Plaintiff Curtis' assistant was hospitalized in a coma and Plaintiff was unable to obtain the briefing materials before the hearing. Plaintiff was attempting to compel Defendants to bring forth the archetype of an instrument referred to as the "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", allegedly signed by Nelva Brunsting on 8/25/2010 (Hereinafter the 8/25/2010 QBD). (Exhibit 4: E11-E19)

31. This instrument is the subject of Defendants' pending no-evidence Motion for Partial Summary Judgment, which Defendants removed from calendar after Plaintiff Curtis filed answer with Motion and demand to produce evidence. Defendants continue to use the instrument to threaten the Plaintiffs while perpetually refusing to produce it and qualify the alleged instrument as evidence. The 8/25/2010 QBD instrument is of dubious origin and doubtful validity, but plays very prominently in Defendants' disingenuous posturing as hereinafter more fully appears.

32. At the hearing October 2, 2013 this Court expressed concern over Plaintiff's lack of preparation and directed Pro se Plaintiff Curtis to retain counsel so that the discovery process could proceed. Plaintiff Curtis had difficulty finding counsel within the Court's time frame and had the misfortune of retaining Jason Ostrom.

33. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants agreed to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting, thus polluting diversity and facilitating a remand to the Harris County Probate Court.

34. In exchange, Defendants agreed to abide by the federal injunction and all orders of the federal Court and on that basis the Court approved the amended complaint and entered an order for remand to the Harris County Probate Court. (Exhibit 3: E10)

V. THE PROCEEDINGS ARE IN STASIS BY DESIGN

35. Curtis v Brunsting is a lawsuit related only to the Brunsting Trusts.

36. There is no docket control order and no trial date in place in the trust litigation or in any related matter pending in the state courts. (Exhibit 19: E1252-E1253)

37. The office of Executor for the estate is vacant and the probate of the estate is the only claim the probate Court has to jurisdiction over the Brunsting trust litigation.

38. Defendant co-conspirators, Attorneys Vacek & Freed, are sequestered in the District Court, where there is no plaintiff, and the probate Court has refused to join the suits.

39. The Defendants' attorneys and Plaintiff Brunsting's attorney have scheduled summary judgment hearings and un-scheduled those hearings, but Curtis cannot get a hearing set on dispositive motions in that Court.

40. The probate Court has clearly colluded with the lawyers to validate the 8/25/2010 QBD without an evidentiary hearing, to create delay, to avoid evidentiary hearings, to exacerbate Plaintiff's costs and to apply Hobbs Act pressure. There is a clear "stream of benefits" at play here.

41. There is no current or proper accounting and no balance sheet has ever been produced.

42. Other than an Order modifying the federal injunction, in the two years this case has been in Harris County Probate Court No. 4 there have been no evidentiary hearings and no orders or judgements have been entered on the record.

43. Rather than set dispositive motions for hearing on Plaintiff Curtis' request, Plaintiff was ordered to a second mediation, with Defendants who have established an intractable record of having no intentions of honoring any legal or moral obligations.

44. Neither the lawyers nor the probate Court will make a distinction between the trust and the estate.

45. Resolution of the litigation and distributions from the trust are being held hostage to the payment of attorneys' fees in direct defiance of this Court's express orders and the purposes for the trust.

46. Defendants absolutely refuse to deposit income into an appropriate account for the beneficiary as ordered by this Court's injunction and continue to flaunt the law in their effort to game the judicial process as hereinafter more fully appears.

VI. IN THE HARRIS COUNTY PROBATE COURT

47. Upon remand to the Harris County Probate Court, Defendants' Counsel filed a motion to modify the injunction to allow Defendants to pay the quarterly and annual taxes without the expense of petitioning the Court each time and a limited modification was granted relating only to payment of taxes and associated professional fees.

48. Jason Ostrom agreed to provide Plaintiff Curtis with a review of documents before they were filed, but did not communicate before, or even copy her after pleadings were filed. Plaintiff was forced to data mine to try to discover what was happening in the probate Court and received much of her information via email from Carl Brunsting.

49. The five Brunsting siblings then attended a mediation that ended with no prospect for resolution. Immediately thereafter, Defendants' attorneys with Mills Shirley filed a petition to be relieved as counsel of record, citing to non-specific conflicts of interest.

50. Then, without conferring and having never submitted a single invoice to Plaintiff Curtis, Jason Ostrom filed application for a distribution of $25,000 from the trust to pay his attorney fees and Carole Brunsting's attorney, Darlene Payne Smith, objected.

51. Ostrom then filed a second motion for a distribution of $45,000, after discussion with Curtis, and both Anita and Carole objected.

52. Anita's new counsel, Brad Featherston, argued that the trust was not liable to pay the attorney creditors of the beneficiary. (Exhibit 20: E1254-E1409) Anita attached a "version" of the alleged 8/25/2010 QBD and a copy of the 2005 Restatement.

53. Carole's objection contained as an exhibit, a "true and correct copy" of the 8/25/2010 QBD. Three distinctly different true and correct copies of the one alleged 8/25/2010 QBD are now in the record bearing different signature page 37's, as the attached exhibit shows. (Exhibit 4: E11-E19)

54. Mr. Ostrom was repeatedly advised that complete consolidation with Carl Brunsting was not authorized or proper because of a conflict of interest with Carl Brunsting's Counsel, Bobbie Bayless.

55. Curtis was also emphatic that her mother did not lack capacity but discovered in her data mining that the cases had been consolidated upon a verbal motion made at a previous hearing and, without notice to or consent from Plaintiff Curtis, against direct and adamant insistence from Plaintiff Curtis that her mother was not incompetent, Jason Ostrom filed an amended complaint in the probate Court raising question as to the competency of a very lucid Nelva Brunsting.

56. Plaintiff Curtis then discovered, after the fact, that Mr. Ostrom, in total and absolute disregard for his instructions, had moved in secret to re-plead, consolidate and had again compromised Plaintiff's claims.

57. Not only did Ostrom attempt to dissolve the distinction between the trust and the estate by using the estate heading in his "amended complaint", the changes made by Ostrom are the only basis for Defendants' attorneys and the probate Court to threaten Plaintiff Curtis with disinheritance, using violation of the no contest provisions in the alleged 8/25/2010 QBD (the forged extortion instrument[6]).

[6] In violation of 18 U.S.C. §1951(b) and 18 U.S.C. §2 and Texas Penal Codes §§31.02 & 31.03

58. Plaintiff Curtis immediately discharged Mr. Ostrom and resumed personal control of the litigation, but more than substantial damage had already been done by moving the matter to a corrupt Harris County Probate Court, as hereinafter more fully appears.

VII. VACANCY IN THE OFFICE OF ADMINISTRATOR

59. At a brutal deposition before trial in the District Court, Carl Brunsting was unable to answer questions, clearly having failed to fully recover from the encephalitis illness and coma that created the Defendants' opportunity for all of the untoward conduct that spawned the causes for this litigation.

60. Carl thereafter resigned as executor on February 2, 2015, leaving the office vacant. The office remains vacant.

61. Defendants in the District Court, Vacek & Freed, immediately filed a motion for summary judgment citing Carl's disability as the equivalent of no evidence.

VIII. THE PENDING DISPOSITIVE MOTIONS

62. On June 26, 2015 Defendants' new attorneys in Probate Court No. 4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that the 8/25/2010 QBD is invalid. (Exhibit 5: E20-E28)

63. On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings[7] which were received by Plaintiff Curtis from Anita's counsel, Brad Featherston, via certified mail with signature required.

64. July 7, 2015 Carl Brunsting filed a Motion for Protective Order regarding the illegally obtained wiretap recordings. (Exhibit 8: E343-E393)

[7] It should be noted that this conduct violates Texas Penal Code §16.02 and 18 U.S.C. §§1341, 2511 and constitutes predicate acts.

65. On July 9, 2015 Carl Brunsting filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion. (Exhibit 6: E29-E288)

66. On July 13, 2015 Attorneys for Plaintiff Carl Brunsting and the Defendants filed notices setting hearing on their dispositive motions for August 3, 2015. (Exhibit 10: E404-E405)

67. Also on July 13, 2015 Plaintiff Curtis filed an answer to Defendants' no-evidence motion, with a motion and demand to produce evidence, demanding Defendants produce the archetype of the alleged 8/25/2010 QBD and qualify it as evidence. Defendants cannot produce the forged 8/25/2010 QBD instrument and qualify it as evidence and have steadfastly refused to do so for more than four years. (Exhibits 4: E11-E19 and 11: E406-E452)

IX. THE FIRST COLLUSION

68. On July 22, 2015, while Plaintiff Curtis was in flight home to California, Carl Brunsting's counsel, Bobbie Bayless, arranged with Defendants' counsel to remove the summary judgment and demand to produce evidence motions from the August 3, 2015 calendar to hear an emergency motion for protective orders regarding the wiretap recordings.

69. The August 3, 2015 hearing thus became a hearing on the motion for a protective order to prevent further dissemination of the illegal wiretap recordings. (Exhibit 12: E453-E494)

70. On January 14, 2016 Temporary Administrator Gregory Lester filed a fabricated report to the court, and rather than confine himself to evaluating the merits of the estate's claims he took it upon himself to trespass on the individual litigation brought by Carl and Candace as beneficiaries of the Brunsting trusts. (Exhibit 9: E394-E403)

71. The "Report" attempts to legitimize all of Defendants' misapplications of fiduciary, attempts to legitimize Defendants' baseless claims, and relies heavily on the forged 8/25/2010 QBD, specifically referring to the "no contest clause" concluding that, if the Court ruled on the no contest clause Carl and Candace would "take nothing" and suggesting mediation to resolve the pending lawsuits.

72. In essence, the Gregory Lester report concludes that the estate's claims have no merit. If true, the probate Court would have no claim to jurisdiction over the inter vivos trust litigation. In point of fact the report of Temporary Administrator Gregory Lester is fraudulent and cannot be supported under the law of the trust, the record of the various lawsuits, the common law, or the trust code.

73. On January 25, 2016 Plaintiff Curtis filed a motion for summary judgment (Exhibit 14: E497-E1187) and emailed a request for setting to Judge Comstock asking to have all the dispositive motions set for hearing. (Exhibit 15: E1188)

74. Curtis' Motion also contains petitions for declaratory judgement regarding illicit instruments drafted by Candace Freed and used by Anita Brunsting to commit fraud.

75. As a necessary consideration to hearing of the declaratory judgment motions, Plaintiff Curtis also filed a separate motion to transfer the District Court case to probate Court No. 4, so that Defendant Candace Freed could defend her works and all of the accused co-conspirators would be in the same Court.

76. The Court set a hearing for March 9, 2016 to hear the transfer motion and for a status conference.

X. SCHEME AND ARTIFICE TO DEFRAUD

77. Remand to state Court May 2014.

78. September 2014 Mills Shirley withdrew as counsel for Amy and Anita Brunsting.

79. February 2, 2015 Carl Brunsting resigned as executor of the estate, leaving the office vacant.

80. Plaintiff Curtis terminated the services of Jason Ostrom March 24, 2015.

81. On July 21, 2015 a hearing was held regarding the vacancy of the office of executor. Defendant Amy Brunsting and Plaintiff Candace Curtis are the next listed successor executors, but to avoid argument the parties agreed to the appointment of one Greg Lester, previously unknown to Plaintiff and recommended by the court, as an "independent" temporary administrator for the limited purpose of evaluating the estate claims.

82. On July 22, 2015**,** while Curtis was inflight home to California, the hearings on the dispositive motions and Curtis' Demand to Produce Evidence (Tex. Ev. Cd. §§1002, 1003) of the 8/25/2010 QBD were removed from calendar without notice to, or consent from, Plaintiff Curtis.

83. The August 3, 2015 hearing thus became a hearing on Carl Brunsting's **emergency** motion for a protective order regarding illegal wiretap recordings that had been disseminated in July 2015. (Exhibit 12: E453-E494)

84. On September 1, 2015 Temporary Administrator Greg Lester filed an application to retain counsel to assist him with his duties to the estate.

85. Hearing was set on Gregory Lester's Motion for September 10, 2015 and no transcript of that hearing has been made available. (Exhibit 13: E495-E496)

86. A March 9, 2016 status conference was scheduled on Curtis request to set the dispositive motions for hearing and on Curtis' application to snatch the district Court case.

87. At the March 9, 2016 status/setting conference Attorney Neal Spielman makes numerous disingenuous statements in opposition to Curtis' request to set the pending motions for summary judgement, but then he says things that are as revealing as they are troubling. (emphasis added for easy reference):

Transcript March 9, 2016

88. Page 12 beginning at line 22 (Exhibit 16: E1200)

> *MR. SPIELMAN : We all, collectively, the parties and their counsel at the time, we all agreed to Mr . Lester taking the role that he was taking. And Ms. Curtis, herself, I believe, on the record, spoke of having done her due diligence into every person that was suggested by any attorney that was in this room to serve in Mr. Lester's role, and it was Ms. Curtis' opinion that only Mr. Lester can serve in that role*
>
> *We all, as attorneys or as pro se parties, agreed that what the function that was designated to Mr. Lester was important, was necessary, and that we were going to live by and abide by the report that he wrote.*
>
> *The problem that I see right now, and one of the reasons I suspect why Mr. Mendel suggested that we go to mediation is in deference to and with respect for what Mr. Lester said in his report and what he seems to be trying to suggest to the parties as to what the future of this lawsuit might hold.*
>
> *I think that what we're seeing now is an effort to backtrack from the direction that Mr. Lester tried to set us on and some of the conclusions or recommendations that he made as to what some of these claims, particularly the ones that Ms. Curtis is attempting to bring forward in summary judgment, are going to actually look like.*
>
> *I think the effort to backtrack from what Mr. Lester was instructed to do/ordered to do and what he did, in retrospect, you have to wonder what was the point of even having done that if the parties, or a party, is now going to try to back away from the impact of what that was done?*

89. At Page 14 (E1203) beginning at Line 3 Spielman makes a revealing and disturbing statement indicating additional collusions:

> *One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to talked about the idea of using a former judge -I think* ***we talked about that in the courtroom last time*** *-that the right mediator might help to explain, to educate, to unentrench anybody -whether that be me, whether that be Mr. Mendel, whether that be Ms.*

Bayless, whether that be Ms. Brunsting, Ms. Curtis, whomever. I think Mr. Lester saw the wisdom in mediation. I think we see the wisdom in mediation. But the consternation or the concern at this point, again, is this issue that Ms. Curtis seems to be unwilling to appreciate, adapt, recognize, embrace what Mr. Lester concluded or recommended in his report; and if that's the case, then I wonder if, if spending the money that it takes to go to mediation makes sense.

Frankly, Judge, the most interesting thing that I heard Ms. Curtis say was on the issue of attorneys fees and that that doesn't matter to her; and that is exactly part of the point. ***I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved****. lost my train of thought there for a second. I may have But the point here, Judge, is there seems to be no accountability on Ms. Curtis' behalf for the amount of money that is being spent in this case. Parties have, in the past, suggested, oh, let's not worry about the attorneys fees because that will all even out at the end of the story when everybody decides to divide by five, the corpus of the trust, and the winning parties or the prevailing parties can everything can be adjusted through the division of that estate. But, Your Honor,* ***if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm****. And if that happens, Judge, then the trust is now spending its own money from those people, whether it be three or four, that are still going to get a portion of the estate, a portion of the trust proceeds when this is all said and done.*

I'm rambling just a bit only because it's such a circular discussion -is how do we get this case finished given given the backtracking from everybodys willingness to vest Mr. Lester with the authority to proceed/ and now the one person who doesn't like what he said, after she filed motions for summary judgment that are direct contradiction to the conclusions that he reached. The very constant of having to come down here and respond to those to those motions for summary judgment the amount of money that that will waste is insulting, is offensive to the parties.

I'd love to come up with a creative idea to create some accountability/ perhaps, if it comes in the form of a sanction or perhaps it comes in the form of some kind of bond being posted so that if it turns out that one of the parties who is blowing things up as it were and creating this increased attorneys fees no longer has an interest in the estate with which we can even that out by the end of the day. Perhaps if Ms. Curtis is ordered to post a bond against her claims or to protect against the ability --our ability to recover fees from her if, as and when she loses her case perhaps then we can move forward with additional hearings additional motions and so forth.

90. Page 17 (E1205) lines 1-13:

> *Keep in mind, Judge, that it's not simply --it's not as simple as getting a date for Ms. Curtis' summary judgment motions. There's been no discovery, in terms of depositions done in this case, not the least of which will be depositions from, perhaps, even from the lawyers in the other district court case who drafted the documents that can explain what all went into those documents, what Nelva Brunsting's state of mind was at the time. There's no way to respond to those summary judgment motions right now without the full weight of the discovery process moving forward and all of the money that that's going to cost.*

91. These claims are in direct opposition to the claims Defendants made in their No-evidence Motion. In Defendants' June 25, 2015 No-Evidence Motion for Partial Summary Judgment at page 1 item I (E20):

> *I. Summary of the Argument*
>
> *This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions related to the 8/25/10 QBD (defined below). Plaintiffs challenge the 8/25/10 QBD on the following grounds, for which there is no evidence:*
>
> *foot note:*
>
> *1 Those three other proceedings are: (1) No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; United States District Court for the Southern District of Texas, Houston Division; (2) CA No, 2012-14538; In re Carl Brunsting (202 Petition); 80TH Judicial District Court of Harris County, TX; and (3) CA No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164TH Judicial District Court of Harris County, TX.*

92. However, the most disturbing thing in Mr. Spielman's diatribe were the references to dialogs at a previous hearing involving Mr. Lester, when there was no previous hearing involving Mr. Lester where these matters were properly before the Court.

> *One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to talked about the idea of using a former judge -I think we talked about that in the courtroom last time -that the right mediator might help to explain, to educate, to unentrench anybody -*
>
> *… I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved*

XI. THESE DISCUSSIONS WERE HIGHLY IMPROPER

93. Plaintiff Curtis is an heir and an interested person but not a party to the estate litigation.

94. Candace Louise Curtis v Anita Brunsting et al., (Curtis v Brunsting) was filed in the federal Court fourteen months prior to the first estate claims and having survived dismissal under the Probate Exception to federal diversity jurisdiction, it is inarguably established that Curtis v Brunsting is not connected to the probate of the estate (Exhibit 17: E1243-E1248) and is not subject to probate administration.

95. The only hearing that involved Greg Lester prior to March 9, 2016 was the September 10, 2015 hearing on Greg Lester's September 1, 2015 application to retain counsel to assist him in his fiduciary duties to the estate.

96. The only matter properly before the court on September 10, 2015 was whether or not Mr. Lester should have the authority to retain Jill Willard Young to assist him in his administration obligations to the estate.

97. Neither individual Plaintiff Candace Curtis nor individual Plaintiff Carl Brunsting was in attendance September 10, 2015, as neither is party to the estate litigation and neither objected to Mr. Lester retaining Jill Young to assist with his fiduciary duty to evaluate the estate's claims. That was the only issue properly before the Court on September 10, 2015 and did not include the matters Mr. Spielman states were discussed and where there was apparently an agreement made to treat the Gregory Lester report as if it were a jury verdict before it was even written.

98. Plaintiff has been unsuccessful in attempts to obtain a transcript of this September 10, 2015 hearing.

99. The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs who were prejudiced by those discussions, involving matters not properly before the Court, wherein there were agreements made between the Court, Jill Willard Young, Neal Spielman, Bradley Featherston, Stephen Mendel and Gregory Lester to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter. First to "unentrench" Plaintiff Curtis from her stand upon rights and reliance upon the rule of law in the face of this all too obvious public corruption conspiracy and second, to deprive Plaintiff of substantive due process and access to the Court.

100. Defendants continue to use the forged 8/25/2010 QBD (extortion instrument) to threaten Plaintiffs with disinheritance, going so far as to refer to the September 10, 2015 conspiracy for the proposition that the instrument has been held valid:

Transcript of March 9, 2016 Page 15 (E1203) lines 16-21:

> *But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by - five scenario because of the no - contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm.*

XII. FRAUD UPON PLAINTIFF AND THIS COURT

101. After Defendants claimed there was no evidence the forged 8/25/2010 QBD was invalid, Defendants removed their no-evidence motion from calendar knowing they cannot answer Plaintiff Curtis' demand to produce the thing, explain away the anomalies, and qualify it as evidence, and yet they continue to threaten Plaintiffs with the bogus instrument's "no contest

clause" with the transparent collusion of involuntary Plaintiff Carl Brunsting's Attorney and the probate Court.

102. The probate plan is thus, according to Mr. Spielman, to subject Plaintiffs to endless delay and expense until the Plaintiff victims agree to pay fee ransoms to the attorneys who are holding the beneficiaries' property hostage.

103. Defendants have not willingly honored any agreements, not the trust agreement, not the remand agreement, and cannot be expected to honor any mediated settlement agreement.

104. Defendants knew when they agreed to honor the federal injunction and the Orders entered by this Court as a condition of the remand, that they had no intentions of honoring any legal or moral obligations. Defendants refuse to honor the federal injunction and the orders of this Court even after having promised to do so as a condition of the remand stipulation and Defendants' own pleadings in the probate Court are conclusive evidence of the existence of that fact.

105. Defendants will not, because they cannot, bring forth the archetype of the 8/25/2010 QBD and qualify the thing as evidence. If they could answer Plaintiff Curtis' Motion and Demand to Produce Evidence they certainly would have done so.

106. Instead, Defendants' attorneys conspired with the Court to avoid evidentiary hearings knowing they cannot produce the forged 8/25/2010 QBD extortion instrument and qualify it as evidence, and continue to use it to threaten and intimidate Plaintiffs Curtis and Carl Brunsting.

107. Mr. Spielman confessed on March 9, 2016 that the attorneys conspired at the hearing on application to retain Jill Young, with the probate Court Judges, the Court's crony administrator Gregory Lester, and Jill Young, entering into an illicit agreement to produce a

fictitious "report" and to subsequently treat the fiction as if it were the equivalent of a jury verdict, and this all occurred before the "Report" was even written.

108. Thus, after removing their no-evidence summary judgement motion from calendar knowing their precious 8/25/2010 QBD is a forgery and that they cannot produce the heinous thing and qualify it as evidence, Defendants' attorneys none-the-less continued to use the no-contest clause ruse in the forged 8/25/2010 "extortion instrument", to threaten and attempt to intimidate the Plaintiff victims, who they know full well are owed fiduciary obligations by these Defendants.

109. It is important to note that there are known trust assets that remain unaccounted for. For example, none of the quasi-accountings received from the Defendants reflect the accounts receivable for a $100,000 loan Anita received from the trust in 1999.[8]

110. Moreover, an amendment to the 1996 trust dated April 30, 1999, disclosed by Vacek & Freed in the District Court lawsuit, specifically identifies the $100,000 loan as an advance on Anita's inheritance. That trust amendment was never disclosed by Anita Brunsting in the course of Curtis v Brunsting or the estate suits in the probate Court.

111. A covert letter to the Special Master dated July 15, 2015[9] claims Nelva wanted to continue a history of gifting by paying off Amy and Carole's homes as "she and her husband did the same for Anita in approximately 2005" (Exhibit 21: E1410-E1412) when the public record shows the loan occurred July 1, 1999.

XIII. REQUEST FOR JUDICIAL NOTICE

112. Plaintiff Curtis respectfully asks this Court to take Judicial Notice of her first amended complaint filed Pro se May 1, 2013. That amendment was rejected for filing because

[8] Victoria County Clerk Official Records Instrument #199908618 dated July 1, 1999
[9] Case 4:12-cv-00592 Document 67-1 Filed in TXSD on 08/27/13

Plaintiff Curtis failed to document her efforts to obtain Defendants' consent for the amended complaint. Plaintiff at that time was asking to amend her complaint to bring the matter under federal question jurisdiction based upon evidence obtained after the initial filing. The Jurisdictional Statement in that pre-Ostrom amendment to Curtis' complaint reads as follows:[10]

> *4. This matter was originally brought in equity as breach of fiduciary and related equitable claims that included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2). Plaintiff hereby incorporates those claims by reference as if fully restated herein, but with newly discovered evidence presents additional and alternate claims. Additionally, Plaintiff is informed and believes Defendants are not de jure trustees.*
>
> *5. This complaint now alleges violations of the wire, mail and securities laws of the United States as expressed in Chapter 63 of Title 18 of the United States Code, and Plaintiff is seeking to pursue additional remedies under 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act").*
>
> *6. This court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367 and Section 27 of the Exchange Act (15 U.S.C. §78aa) and exclusive jurisdiction over these claims as this action arises under Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the causes of action implied therefrom.*
>
> *7. In connection with the acts and omissions alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets.*

113. Attorney Jason Ostrom represented to this Court that the purpose for a remand was to afford complete relief to the parties. When Mr. Ostrom made those representations he was well acquainted with the Harris County Probate Court and its officers, and knew full well there would be no remedy flowing from that Court for anyone but attorneys and court cronies.

114. Ostrom's true motivation for remand was apparently to obstruct justice in pursuit of attorney fees, not to provide any form of relief to the parties.

[10] Document No. 48 in this Court's Record

115. Every attorney who has been involved in this case has tried to get the Brunsting Trust removed from an honorable federal Court to Harris County's Probate Court. The reasons at this juncture are crystal clear and have nothing to do with the honest administration of justice.

XIV. CONCLUSION

116. Both Plaintiffs' and Defendants' attorneys' intentional misrepresentations before this honorable Court, that the purpose for a remand was to provide complete relief to the parties, unfairly and unnecessarily polluted diversity to procure the Remand Orders, and in so doing deprived Plaintiff Curtis of a legitimate judicial forum to which she was and is entitled in this case.

117. Everyone involved in this case except Plaintiff Curtis has taken advantage of Carl Brunsting's illness, the Defendants, the Defendants' attorneys, the District Court Defendants and the probate Court.

118. There have been no evidentiary hearings and no rulings have been entered on any substantive issues in the probate Court. The Defendants are paying exorbitant trust income taxes due to the refusal to deposit income into an appropriate account for the beneficiary, as this honorable Court's injunction commands.

119. The attorneys have docketed and un-docketed motions for summary judgment but Plaintiff Cutis cannot buy a hearing, or a scheduling order or a trial date, or an accounting, or respect for the federal injunction, nor respect for any of her rights, and there appears to be no remedy for the parties to be found at the hands of the Harris County Probate Cartel.

120. If there is such a magical document as this 8/25/2010 QBD, that trumps federal injunctions and the Orders of a federal Judge, renders remand agreements nugatory, removes fiduciary obligations, forecloses beneficial interests, taints the blood of innocent remaindermen,

amends what can only be amended by a court of competent jurisdiction and revokes what can only be revoked by a court of competent jurisdiction, the Defendants and their attorneys should be brought before an honorable Court where they will actually be compelled to produce the supernatural thing and qualify it as evidence.

121. Wherefore Plaintiff Curtis respectfully requests that the Court vacate the order granting filing of the amended complaint[11] for fraud upon Plaintiff Curtis and upon this honorable Court, in the interest of justice pursuant to Rules 60(b)(3), (b)(6) and (d)(3) of the Federal Rules of Civil Procedure, voiding the subsequent Remand Order[12] as a matter of right, and restoring this case to this honorable Court's docket.

122. Wherefore Plaintiff Curtis further prays the Court issue the attached proposed order or issue its own orders upon such terms as the Court deems most beneficial to the purposes of Equity and Justice and most beneficial to the public policy considerations in upholding the dignity and authority of this Honorable Court.

Plaintiff/Petitioner so moves,

Petitioner hereby verifies, under penalty of perjury pursuant to the laws of the United States of America and Federal Rules of Civil Procedure Rule 11, that the above statements based upon personal knowledge are true and correct, and as to those things asserted on information and belief, affiant believes those things to be true as well.

[Signatures on the following page]

[11] Document No. 111 in this Courts record
[12] Document No. 112 in this Courts record

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 2ND day of July 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
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Neal E. Spielman
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CANDACE L. CURTIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§ § §	
v	§	Civil Action No. 4:12-cv-00592
ANITA KAY BRUNSTING, et al Defendants	§ § §	

ORDER VACATING LEAVE TO FILE FIRST AMENDED PETITION

On this day, the Court considered Plaintiff's Petition for Vacatur of this Court's Order granting leave for Plaintiff to file a First Amended Petition. The Court, having considered the matter fully, is of the opinion and finds that Plaintiff's request to amend should have been denied. It is therefore, ORDERED that the Court's Order of 15th day May, 2014 granting leave for Plaintiff to file a First Amended Petition is hereby vacated.

It is so Ordered

SIGNED on this _____, 2016

Kenneth M. Hoyt United States District Judge

EXHIBITS

EXHIBIT 1 – Motion for Leave to File First Amended Petition……E1-E4

EXHIBIT 2 – Memorandum and Order Preliminary Injunction……E5-E9

EXHIBIT 3 – Order Granting Motion for Leave to File First Amended Petition……..E10

EXHIBIT 4 – QBD Signature Page 37 Anomalies……E11-E19

EXHIBIT 5 – Defendants' Joint No-Evidence Motion……...E20-E28

EXHIBIT 6 – Carl Brunsting's Motion for Partial Summary Judgment……..E29-E288

EXHIBIT 7 – April 9, 2013 Transcript……...E289-E342

EXHIBIT 8 – Carl Brunsting's Motion for Protective Order……..E343-E393

EXHIBIT 9 – Report of Temporary Administrator……E394-E403

EXHIBIT 10 – Notice of Oral Hearing August 3, 2015……..E404-E405

EXHIBIT 11 – Curtis' Response and Motion to Produce Evidence……E406-E452

EXHIBIT 12 – August 3, 2015 Transcript……..E453-E494

EXHIBIT 13 – Notice of Hearing September 10, 2015……..E495-E496

EXHIBIT 14 – Curtis' Motion for Partial Summary Judgment……E497-E1187

EXHIBIT 15 – Curtis' Request for Hearing Date……...E1188

EXHIBIT 16 – March 9, 2016 Transcript……...E1189-E1242

EXHIBIT 17 – Fifth Circuit Opinion No. 12-20164……...E1243-E1248

EXHIBIT 18 – Amy Brunsting Affidavit……E1249-E1251

EXHIBIT 19 – Agreed Docket Control Order 412,249-401……...E1252-E1253

EXHIBIT 20 – Anita Brunsting's Response to Motions for Distributions…….E1253-E1409

EXHIBIT 21 – Defendants' July 15, 2013 Letter to the Special Master……E1410-E1438

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-00592
	§	JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§	JURY TRIAL DEMANDED

MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion for Leave to File First Amended Petition pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. In light of recently discovered evidence in this case, Plaintiff moves this Court to permit her to file an amended complaint. The proposed amendment asserts an additional legal theory grounded in the same basic facts as the existing complaint, but that will ensure that all parties to be impacted by the ultimate judgment are participants. Moreover, because the claim to be asserted in the amendment appears to be meritorious, it would be in the interests of justice for this claim to be included in the case.

II. BACKGROUND

2. In her Original Petition, Plaintiff brought causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust, stemming from

actions they took with regard to the Trust and Trust assets that harmed Plaintiff.

3. Through reviewing the hundreds of documents produced, Plaintiff has discovered that the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents") executed by Nelva Brunsting after her husband's death improperly attempted to change the terms of the then-irrevocable Trust. Plaintiff now seeks leave to file a Declaratory Judgment Action as to the validity of the Modification Documents.

III. ARGUMENTS AND AUTHORITY

4. Leave to amend the pleadings "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). The United States Supreme Court has long instructed that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 183 (1962). The Ninth Circuit, moreover, has stated that the policy of permitting amendments "should be applied with 'extreme liberality.'" *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

5. Rule 15(a) reinforces one of the fundamental policies underlying the Federal Rules - that pleadings are not an end in themselves, but instead are only a means of helping ensure that each case is decided on its merits. *See* 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1473, at 521 (2nd ed. 1990). Thus, "if the underlying facts relied upon by a plaintiff may be a proper subject for relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*, 371 U.S. at 182; *see also Frost v. Perry*, 919 F. Supp. 1459, 1468 (D. Nev. 1996) (stating that Rule 15 should be interpreted "very liberally, in order to permit meritorious actions to go forward, despite inadequacies in the pleadings").

6. Quite appropriately, "courts have not imposed any arbitrary timing restrictions on a party's request for leave to amend and permission has been granted under Rule 15(a) at various

stages of the litigation: following discovery; after a pretrial conference; . . . when the case is on the trial calendar and has been set for a hearing by the district court; at the beginning, during, and at the close of trial; after a judgment has been entered; and even on remand following an appeal." 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1488, at 652-57 (2d ed. 1990) (citations omitted). Thus, delay - either in seeking to amend or occasioned by an amendment - in itself cannot justify denial of leave to amend. *See, e.g., DCD Programs*, 833 F.2d at 186.

7. Given the liberal policy toward amendments, the burden of demonstrating why leave to amend should not be granted falls squarely on the nonmoving party. *See id.* at 187; Frost, 919 F. Supp. at 1469. In deciding whether the nonmovant has carried this burden, courts commonly consider the following four factors: (1) bad faith or dilatory motive on the part of the movant; (2) undue delay in filing the motion; (3) prejudice to the opposing party; and (4) the futility of the proposed amendment. *See, e.g., Roth v. Marquez*, 942 F.2d 617, 628 (9th Cir. 1991).

8. Plaintiff has not unduly delayed submitting the proposed amendment, as the evidence supporting the claim has only recently come to light. These facts warrant an amendment of the Plaintiff's pleadings.

9. The Defendants would not be unfairly prejudiced by such an amendment, and their counsel has indicated that he is not opposed to our Motion for Leave.

10. Plaintiff therefore seeks leave to file the First Amended Complaint attached hereto as Exhibit "A." Justice requires that Plaintiff be afforded an opportunity to test the merits of that claim.

IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) grant leave to file the First

Amended Complaint attached hereto as Exhibit "A," and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to amend the complaint.

/s/ Jason B. Ostrom
Jason B. Ostrom

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	Ä	
	Ä	
Plaintiff,	Ä	
VS.	Ä	CIVIL ACTION NO. 4:12-CV-592
	Ä	
ANITA KAY BRUNSTING, *et al*,	Ä	
	Ä	
Defendants.	Ä	

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiffôs, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendantsô, Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiffôs renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiffôs motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust (ñthe Trustò). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

17-20360.237

recovery of legal fees and damages. The Court denied the plaintiffôs request for a temporary restraining order and for injunctive relief. However, concurrent with the Courtôs order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendantsô argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiffôs case.

The plaintiff gave notice and appealed the Courtôs dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Courtôs dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiffôs renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to ñprovide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting.ò According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiffôs request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Courtôs power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

17-20360.241

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	Ä	
	Ä	
Plaintiffs,	Ä	
VS.	Ä	CIVIL ACTION NO. 4:12-CV-592
	Ä	
ANITA KAY BRUNSTING, *et al*,	Ä	
	Ä	
Defendants.	Ä	

ORDER GRANTING MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

On this day, the Court considered the plaintiffôs motion for leave to file first amended petition. The Court, having considered the same, is of the opinion and finds that plaintiffôs request to amend should be GRANTED.

It is therefore, ORDERED that the plaintiff is hereby granted leave to amend her original petition by filing her first amended petition in its stead.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

17-20360.242

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§
	§
v.	§
	§
ANITA KAY BRUNSTING, et al	§

Anita & Amy Brunsting's Joint No-Evidence Motion for Partial Summary Judgment

Defendants, Anita Brunsting and Amy Brunsting ("Defendants"), file this joint no-evidence motion for partial summary judgment and would respectfully show the Court as follows:

I. Summary of the Argument

This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions[1] related to the 8/25/10 QBD (defined below). Plaintiffs challenge the 8/25/10 QBD on the following grounds, for which there is no evidence:

1. Nelva's signature on the 8/25/10 QBD was forged.

2. Nelva lacked capacity when she executed the 8/25/10 QBD.

3. Nelva was unduly influenced into executing the 8/25/10 QBD.

4. Nelva was fraudulently induced into executing the 8/25/10 QBD.

5. Nelva executed the 8/25/10 QBD under duress.

---

[1] Those three other proceedings are: (1) No. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting*; United States District Court for the Southern District of Texas, Houston Division; (2) CA No, 2012-14538; *In re Carl Brunsting* (202 Petition); 80TH Judicial District Court of Harris County, TX; and (3) CA No. 2013-05455; *Carl Henry Brunsting v. Candace Freed & Vacek & Freed*; 164TH Judicial District Court of Harris County, TX.

II. Background

This is a family dispute among five (5) siblings of the Brunsting family: Carl, Candace, Carol, Anita, and Amy. The dispute involves a trust created by their parents: Elmer Brunsting ("Elmer") and Nelva Brunsting ("Nelva").

Elmer and Nelva created the Brunsting Family Living Trust on or about October 10, 1996. The trust was restated on January 12, 2005 (the "Family Trust"). Elmer and Nelva served as trustees of the Family Trust until 2008, when Elmer lost the ability to handle his financial affairs and Nelva served as trustee alone. In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees.

Shortly after Elmer died in April 2009, in accordance with the Family Trust, successor trusts resulted: the Elmer H. Brunsting Decedent'sTrust ("Elmer's Decedent's Trust"); and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Nelva served as the trustee of both trusts, with Carl and Anita to serve as successor co-trustees.

In May 2010, Candace wrote, "[Nelva] has saved my house for me a few years in a row now by giving me the money to pay the property taxes. This time I told her she should take it out of my inheritance (that's what Daddy always said). She said no, she could help me." Candace then continued, "[Nelva] always wants to know what I spend all my money on. Why I have no savings. Why I didn't plan better. [Nelva] treats me like such a FAILURE." Apparently, Nelva thought Candace was a spendthrift and not good at handling her own financial affairs.

In or about July 2010, Carl was hospitalized for an extended period of time due to herpes encephalitis, an acute infection and inflamation of his brain. As a result, Carl's mental capacity and cognitive abilities were severely compromised. Carl continues to suffer from residual symptoms, which is why his wife Drina was substituted into this case as his attorney-in-fact.

In accordance with the Family Trust, on August 25, 2010, Nelva executed a Qualified

Beneficiary Designation and Exercise of Testamentary Powers of Appointment (the "8/25/10 QBD"). In short, the document is an exercise of Nelva's testamentary powers of appointment as contemplated by the Family Trust. The document was notarized by Nelva's attorney, Ms. Freed.[2] The chief change that prompted plaintiffs' challenge to the 8/25/10 QBD is that the co-trustees for Carl's and Candace's interest under the trust changed from: (1) Anita and Carl; to (2) Anita and Amy. Apparently, the change in co-trustees from Anita and Carl to Anita and Amy offends Carl and Candace.

Carl and Candace ("Plaintiffs") brought several proceedings alleging every conceivable means to challenge the 8/25/10 QBD. Candace filed a case in Federal Court in February 2012. Carl originally filed a Rule 202 Petition in March 2012. In January 2013, Carl filed a lawsuit against Nelva's attorneys that drafted the 8/25/10 QBD. Carl filed this litigation in this Court in April 2013. Thus, Carl and Candace have had more than thirty-eight (38) months in four (4) separate proceedings to gather evidence regarding the 8/25/10 QBD.

III. Argument & Authorities

This motion relates solely to plaintiffs challenges to the 8/25/10 QBD. It is important to put matters into perspective on plaintiffs' claims related to the 8/25/10 QBD. Ordinarily the laundry list of challenges a contestant makes to an instrument is when there is a disproportionate change in the distribution of property. Here, the 8/25/10 QBD does not affect the percentage of assets each child will receive in trust nor the distributions standards. For plaintiffs, the sole impact is the change in co-trustees from: (1) Anita and Carl; to (2) Anita and Amy.

[2] The attorneys' name is Candace Lynne Kunz Freed. Ms. Freed is used to prevent confusion between Nelva's attorney, Candace Freed, and Nelva's daughter, Candace Curtis, since they share the same first name.

Plaintiffs' challenges to the 8/25/10 QBD center on the contention that Nelva would never have appointed Amy to serve in Carl's place as a co-trustee. However, plaintiffs ignore the fact that Carl suffered from herpes encephalitis in July 2010, which caused Carl's substantially diminished physical and mental capacity.

A. No Evidence Nelva's Signature on the 8/25/10 QBD was Forged.

Plaintiffs allege the 8/25/10 QBD was forged.

A document is forged if a person signs the document so that it purports to be the act of another who did not authorize the act.[3] The burden of proof rest on those seeking to set aside the instrument to show forgery.[4]

There is no competent summary judgment evidence to support that someone other than Nelva executed the 8/25/10 QBD. Accordingly, this no-evidence motion for summary judgment must be granted.

B. No Evidence Nelva Lacked Capacity When Executing 8/25/10 QBD.

Plaintiffs allege Nelva lacked capacity when executing the 8/25/10 QBD.

The law presumes that a trustor has sufficient mental capacity at the time of execution to understand her legal rights.[5] Therefore, the burden of proof rests on those seeking to set aside the instrument to show lack of mental capacity at the time of execution.[6]

Here, plaintiffs must provide competent summary judgment evidence Nelva lacked sufficient

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[3] TEXAS PATTERN JURY CHARGES: EXPRESS TRUSTS PJC 235.4 (2014); *See In re Estate of Flores*, 76 S.W.3d 624, 630 (Tex. App.—Corpus Christi 2002, no pet.).

[4] *In re Estate of Flores*, 76 S.W.3d 624, 630 (Tex. App.—Corpus Christi 2002, no pet.)

[5] *Walker v. Eason*, 643 S.W.2d 390, 391 (Tex. 1982); *Bradshaw v. Naumann*, 528 S.W.2d 869, 873 (Tex. Civ. App.—Austin 1975, writ dism'd); and TEX. PROP. CODE § 112.007.

[6] *Walker v. Eason*, 643 S.W.2d 390, 391 (Tex. 1982).

mind and memory to understand the nature and consequences of her acts and the business she was transacting when she executed the 8/25/10 QBD.[7] Plaintiffs can provide no such evidence. Accordingly, this no-evidence motion for summary judgment must be granted.

C. No Evidence Nelva was Unduly Influenced to Sign the 8/25/10 QBD.

Plaintiffs alleged Nelva's execution of the 8/25/10 QBD was procured by undue influence.

"Undue influence" means that—

1. an influence existed and was exerted, and
2. the influence undermined or overpowered the mind of the person executing the document at the time of its execution, and
3. the person would not have executed the document but for such influence.[8]

The burden of proving undue influence is upon the party contesting its execution.[9]

Here, there is no evidence that Anita and/or Amy exerted any influence, much less undue influence, to make themselves trustees of Carl's and Candance's share of the trust after Nelva's death.

There is no evidence that, prior to its execution, Nelva had discussions with Anita and/or Amy regarding the terms of the 8/25/10 QBD.

There is no evidence that Anita and/or Amy contacted Nelva's attorney, Ms. Freed, and prescribed the terms or even discussed the terms of the 8/25/10 QBD.

There is no evidence that Anita and/or Amy participated in the drafting of the 8/25/10 QBD.

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[7] *See Mandell & Wright v. Thomas*, 441 S.W.2d 841, 845 (Tex. 1969).

[8] TEXAS PATTERN JURY CHARGES: EXPRESS TRUSTS PJC 235.3 (2014); *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (Tex. 1963).

[9] *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (citing *Scott v. Townsend*, 166 S.W. 1138 (Tex. 1914)).

There is no evidence that Anita and/or Amy were present when Nelva executed the 8/25/10 QBD.

Assuming, without admitting, there was an influence, there is no evidence that Nelva was mentally or physically compromised in August 2010, such that her free will was susceptible to being overcome.

Accordingly, this no-evidence motion for summary judgment must be granted.

D. No Evidence Nelva Executed the 8/25/10 QBD as a Result of Fraud.

Plaintiffs allege that Nelva executed the 8/25/10 QBD as a result of fraud. This type of allegation is a species of undue influence.[10] Nevertheless, in an abundance of caution and in the interest of judicial economy, Anita and Amy will specifically address plaintiffs' fraud claims as a separate allegation.

Fraud occurred if—

1. a person made a material misrepresentation, and
2. the misrepresentation was made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation was made with the intention of inducing the trustor to sign the document, and

4. Trustor relied on the misrepresentation in signing the document.

"Misrepresentation" means:

A false statement of fact [or]

A promise of future performance made with an intent, at the time the promise was made, not to perform as promised [or]

A statement of opinion based on a false statement of fact [or]

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[10] TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6; *Curry v. Curry*, 270 S.W.2d 208 (Tex. 1954).

A statement of opinion that the maker knows to be false [or]

An expression of opinion that is false, made by one claiming or implying to have special knowledge of the subject matter of the opinion.

"Special knowledge" means knowledge or information superior to that possessed by Trustor and to which Trustor did not have equal access.[11]

The contestant claiming fraud has the burden of proof.[12]

There is no evidence that Anita and/or Amy made any representation to Nelva with the intention of inducing Nelva to sign the 8/25/10 QBD.

Assuming, without admitting, that Anita and/or Amy made a representation to Nelva with the intention of inducing Nelva to sign the 8/25/10 QBD, there is no evidence such representation was false.

Assuming, without admitting, that Anita and/or Amy made a false representation, there is no evidence Nelva relied on the misrepresentation in executing the 8/25/10 QBD.

Accordingly, this no-evidence motion for summary judgment must be granted.

E. No Evidence Nelva Signed 8/25/10 QBD Under Duress.

Plaintiffs alleged the 8/25/10 QBD is invalid because Nelva executed it under duress.

Duress is the mental, physical, or economic coercion of another, causing that party to act contrary to his free will and interest.[13]

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[11] TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6.

[12] TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6; *In re Estate of Graham*, 69 S.W.3d 598, 612 (Tex. App.—Corpus Christi 2001, no pet.).

[13] TEXAS PATTERN JURY CHARGES: CONTRACTS PJC 101.26; *Black Law Pipe Line Co. v. Union Construction Co.*, 538 S.W.2d 85 n.2 (Tex. 1976); *Brooks v. Taylor* 359 S.W.2d 539, 542 (Tex. Civ. App.–Amarillo 1962, writ ref'd n.r.e.); and *Housing Authority of City of Dallas v. Hubbell*, 325 S.W.2d 880, 905 (Tex. Civ. App. – Dallas 1959, writ ref'd n.r.e.).

The contestant claiming duress bears the burden of proof.[14]

As the Texas Pattern Jury Charge warns, duress is only reached if the alleged coercion can legally constitute duress.[15] "It is never duress to threaten to do that which a party has a legal right to do."[16]

There is no evidence that Anita and/or Amy used mental coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

There is no evidence that Anita and/or Amy used physical coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

There is no evidence that Anita and/or Amy used economic coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

Accordingly, this no-evidence motion for summary judgment must be granted.

IV. Prayer

For these reasons, Defendants pray that their no-evidence motion for partial summary judgment be granted and that Defendants receive all other relief, general and special, legal and equitable, to which they or the trusts may be entitled.

[SIGNATURES ON FOLLOWING PAGE]

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[14] *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006).

[15] TEXAS PATTERN JURY CHARGES: CONTRACTS PJC 101.26.

[16] *Ulmer v. Ulmer*, 162 S.W.2d 944, 947 (Tex. 1942).

Respectfully Submitted,

/s/ Brad Featherston

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Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

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via e-service or email on June 26, 2015.

/s/ Brad Featherston

Bradley E. Featherston

RV

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County Clerk
Harris County

PROBATE COURT 4

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NO. 412.249-401

ESTATE OF	§	**IN PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	**IN PROBATE COURT**
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	**NUMBER FOUR (4) OF**
	§	**HARRIS COUNTY, TEXAS**

CARL HENRY BRUNSTING'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TO THE HONORABLE PROBATE COURT:

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COMES NOW Drina Brunsting as attorney-in-fact for Carl Henry Brunsting, individually ("Carl"), filing this Motion for Partial Summary Judgment, and in support thereof would show as follows:

I.

Summary Judgment Issues

This is a case involving, among other things, a dispute about changes purportedly made to a trust of which all of the parties are beneficiaries, as well as the administration of that trust and disbursements made from that trust after the parties' mother resigned as trustee and Defendant, Anita Kay Brunsting ("Anita"),[1] took over the trustee duties. This Motion for Partial Summary Judgment seeks relief on two specific points at issue in this case.

1. Carl seeks a determination, as a matter of law, that the August 25, 2010 Qualified Beneficiary Designation is null and void because it violates the terms of the Brunsting Family Living Trust as restated on January 12, 2005 (the "Family Trust") which prohibits amendments after the death of the first founder.[2] Elmer, the first founder to die, died in 2009. (Exhibit 4, p. P4347).

2. Carl also seeks a determination, as a matter of law, that disbursements in 2011 of Exxon Mobil stock and Chevron stock were improper distributions for which Anita, as the trustee making the disbursements is liable, and for which the beneficiaries who

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[1] The Brunsting family members, for simplification purposes only, will all be referred to herein by their first names.

[2] Because the Family Trust refers to settlors as founders, that terminology is being used in this motion.

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received benefits from those distributions are also liable pursuant to Tex. Prop. Code §114.031, including through an offset of the applicable beneficiary's liability against that beneficiary's remaining interest in the trust estate.

II.

Summary Judgment Evidence

The following summary judgment evidence is presented in support of this motion:

1. The Restatement of The Brunsting Family Living Trust dated January 12, 2005 (P317-403)[3] (Exhibit 1)
2. The First Amendment to the Restatement to the Brunsting Family Living Trust dated September 6, 2007 (P444-445) (Exhibit 2)
3. The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated August 25, 2010 (P407-443) (Exhibit 3)
4. Documents produced by Computershare in Carl's pre-suit discovery action filed on March 9, 2012[4] (P4308-4396) (Exhibit 4)
5. Schedule F from the summaries of transactions provided by Anita on March 27, 2012 (P12168-12170) (Exhibit 5)

[3] The page number references are to the documents as numbered and previously produced by Carl in discovery in this case.

[4] This exhibit as filed has been redacted to remove or limit sensitive information. Such redactions were not made on the documents when produced.

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6. Anita's Responses to Candace Louise Curtis' First Written Interrogatories (Exhibit 6)

7. Acceptance By Successor Trustee dated December 21, 2010 (p. P446) (Exhibit 7)

III.

8/25/10 Qualified Beneficiary Designation Is Void As a Matter of Law

In 1996, Elmer and his wife Nelva E. Brunsting ("Nelva") created the Family Trust. In addition to the restated Family Trust dated January 12, 2005 (Exhibit 1), a further amendment was done on September 6, 2007 which changed the provision naming successor trustees (Exhibit 2). Carl and Amy had been named successor trustees in the Family Trust, with Candy named as a further potential successor co-trustee should either Carl or Amy be unable to serve (Exhibit 1, p. P239, Article IV, Section B). The 2007 amendment named Carl and Candy as successor trustees (Exhibit 2).

Article III of the Family Trust allowed it to be revoked or amended only so long as both founders were living. The Family Trust specified, however, that upon the death of the first founder, the Family Trust "shall not be subject to amendment, except by a court of competent jurisdiction." (Exhibit 1, P. P237, Article III, Section, B, first paragraph). The same section in Article III concerning amendments also addressed the issue of qualified beneficiary designations with the following explanation:

> "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*

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or interest alone." (emphasis added) (Exhibit 1, p. P237, Article III, Section B, second paragraph)

On April 1, 2009, Elmer Brunsting died, thus triggering the provision which stated that the trust had become irrevocable and could no longer be amended, including by way of a qualified beneficiary designation. Elmer's death also triggered the division of the Family Trust's assets into the Elmer H. Brunsting Decedent's Trust ("Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Survivor's Trust") (Exhibit 1, p. P257, Article VII, Section B).

In July 2010, when Carl became ill with encephalitis and was in no position to continue to moderate the contentious relationship between his sisters as he had done before, the Defendants took aggressive steps to take control of the Family Trust's assets to the exclusion of Carl, and in some respects, to the exclusion of Carl's other sibling, Candy. Those steps culminated in the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement prepared by Nelva's counsel.[5] Under that document, only Carl and Candy were stripped of rights they had been afforded under the Family Trust.

This was done despite the lack of ambiguity in Article III of the Family Trust. That Article provides that a qualified beneficiary designation is an amendment to the Family Trust and that no amendment could be made after Elmer died in 2009. Moreover, any confusion that might be caused

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[5] A separate action was brought against Vacek & Freed and Candace Freed in Cause No. 2013-05455; *Carl H. Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC;* In the 164th Judicial District Court of Harris County, Texas when that law firm refused to continue a tolling agreement until a resolution could be reached among the Brunsting siblings. That action can not continue to be prosecuted, however, until a successor personal representative is appointed to replace Carl. Some of the issues raised in this motion should make it clear why an action was brought against the attorneys who prepared an instrument in conflict with the provisions of the earlier instrument they, themselves had also prepared.

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by the title of the document executed on August 25, 2010 which included both the term "qualified beneficiary designation" and "exercise of testamentary powers of appointment" would seem to be dispelled by consulting the definitions contained in Article XIII of the Family Trust. The definition provided for a power of appointment indicates that is simply another name for a qualified beneficiary designation. That definition is found in Article XIII which reads as follows:

> 10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgments by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.
>
> The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.
>
> The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration. (Exhibit 1, p. P309, Article XIII, definition 10).

While that is really more of a recitation of the requirements than a definition, what it does make clear is that, under the terms of the Family Trust, a qualified beneficiary designation and a power of appointment are one and the same. Thus, regardless of whether it was called a qualified beneficiary designation, a power of appointment, or both, the Family Trust states that it is to be

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considered an amendment to the trust.[6] As such it was prohibited by the Family Trust after the death of one of the founders. The 8/25/10 Qualified Beneficiary Designation was prepared after Elmer's death and is, therefore, void as a matter of law.

IV.

Stock Transfers Were Improper as a Matter of Law

Anita took over the role of trustee from her mother on December 21, 2010. (Exhibit 7). Once Anita took over as trustee, she used her new position of control to make distributions of substantial portions of Exxon Mobil and Chevron stock to herself, her children, her sisters, and one of her sister's children, and to the exclusion of her ill brother, Carl, who, after his mother, was the one most in need of assistance. Those transactions were as follows:

1. Anita transferred 1120 shares of Exxon Mobil stock to Amy from the Survivor's Trust on May 9, 2011 (Exhibit 4, p. P4310, 7th paragraph; p. P4385-4386)
2. Anita transferred 160 shares of Exxon Mobil stock to herself from the Survivor's Trust on June 13, 2011 (Exhibit 4, p. P4310, 8th paragraph, p. P4387-4388)

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[6] While Defendants may attempt to claim confusion because of the inclusion of language in Article VIII, Sections B and C suggesting the surviving founder would have some right to make powers of appointment (Exhibit 1, p. P262 and 264) , those provisions, at best, conflict with, but do not negate, the provisions indicating such to be just another name for a qualified beneficiary designation which is not allowed after the first founder's death because it would be an attempted amendment to a trust which is no longer revocable. (Exhibit 1, p. P237, Section B). And should Defendants attempt to assert that there is some different status given to a power of appointment pursuant to the terms of the Family Trust, that is not specified anywhere, nor was any distinction preserved by the 8/25/10 Qualified Beneficiary Designation itself.

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3. Anita transferred 135 shares of Chevron stock to herself from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12169, bottom of page under "Anita became trustee Dec. 2011")[7]

4. Anita transferred 135 shares of Chevron stock to Amy's minor daughter, Ann Brunsting, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

5. Anita transferred 135 shares of Chevron stock to Amy's minor son, Jack Brunsting, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

6. Anita transferred 135 shares of Chevron stock to her own minor daughter, Katie Riley, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

7. Anita transferred 135 shares of Chevron stock to her own son, Luke Riley, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

8. Anita transferred 160 shares of Exxon Mobil stock to Candy from the Survivor's Trust on June 15, 2011 (Exhibit 4, p. P4310, 8th paragraph; p. P4387-4388)

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[7] The proof of the transfers of Chevron stock must be taken from Anita's summaries provided on March 27, 20112 because Carl is aware of no transfer documents ever having been provided by Anita. Likewise, the documents concerning the Exxon Mobil stock transfers were not provided by Anita, but Carl had learned of those transfers from Candy and sought the records directly from Exxon Mobil's transfer agent through the pre-suit discovery action he filed on March 9, 2012. It was only after Anita received notice of that action that she provided her unsupported summary. The inadequacies of Anita's disclosures as a fiduciary, however, will be addressed at a later time.

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9. Anita transferred 1325 shares of Exxon Mobil stock to Carole from the Decedent's Trust on June 15, 2011 (Exhibit 4, p. P4310, 3rd paragraph; p. P4362; p. P4369-4370)

None of these transfers were authorized by the provisions of the Family Trust. One reason they are unauthorized is that all of the shares of stock, other than those transferred to Carole, were transferred from the Survivor's Trust. Article VIII of the Family Trust requires the Survivor's Trust to be administered solely for the surviving founder's benefit.[8] That Article requires distributions, whether of income[9] or principal to be for the founder's benefit as may be necessary for her education, health, maintenance, and support. (Exhibit 1, p. P261-263, Article VIII, Section B and C). These disbursements were not to the surviving founder or for her benefit[10] and thus were not authorized by the Family Trust.

And even if the Family Trust had provided for distributions from the Survivor's Trust to someone other than the surviving founder, these were distributions of principal. Therefore, Anita, as trustee, was required to follow the specified standards for disbursements for the surviving

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[8] Once again, after the party vacancy has been cured, the issue of Vacek & Freed's role in the administration of the Family Trust is one which needs to be addressed in the case filed against that law firm, but it is clear that Vacek & Freed took on Anita's representation as trustee and that they also continued to represent Nelva until her death. In addition to the damages caused by these improper transfers, if the transfers are not reversed, the question of tax consequences raised by failing to use the Survivor's Trust only for Nelva's benefit will have to be explored.

[9] In addition to the lost value of the shares themselves, all shares were dividend-bearing shares during the period after they were transferred, and those amounts of income were also lost.

[10] In fact, there is a significant question concerning whether grandchildren would have been entitled, under any circumstances, to distributions from the Family Trust until the death of both founders. Article I, Section C limits descendants to the named children of Elmer and Nelva Brunsting and any children subsequently born to or adopted by Elmer and Nelva. (Exhibit 1, p. P234, last full paragraph).

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founder's education, health, maintenance, or support. (Exhibit 1, p. P262-263). Instead, Anita has admitted in her responses to Candy's interrogatories that she did not take anything into consideration, including whether the distributions were necessary or advisable even to the recipients,[11] much less to the surviving founder. Instead, Anita indicated such transfers were "made at Nelva Brunsting's instruction."[12] (Exhibit 6, Responses to Interrogatory Numbers 3, 4, 5). That is not a basis under the terms of the Family Trust for these transfers, even if they had been otherwise authorized transfers. Thus, these transfers resulted from Anita's breach of her fiduciary duties[13] and were improper as a matter of law.

And although the disbursement of 1325 shares of Exxon Mobil stock to Carole came from the Decedent's Trust, the terms of the Family Trust as to administration of the Decedent's Trust were still not followed. All net income from the Decedent's Trust was to be paid to the surviving founder, and only limited amounts of principal could also be disbursed to the surviving founder without the imposition of the guidelines set forth in Article IX. (Exhibit 1, p. P268-269, Article IX). So, even

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[11] Leaving aside for the moment Nelva's health issues and her need for caregivers, as well as Carl's serious medical issues, Anita's summary reflects that none of these transfers were necessary. The June 14, 2011 transfers of Chevron stock to Amy's minor children were, according to Anita's own summary, a "gift for future car/college." (Exhibit 5, p. P12170). And the similar transfers to Anita's own children were described as "gift for college exp." (Exhibit 5, p. P12170). The gifts to Anita's children come on the heals of, or were made contemporaneously with, over $37,000 in other disbursements to Anita for college expenses and automobiles for her children. (Exhibit 5, p. P12169).

[12] That seems unlikely since there was no history of such distributions while Nelva was trustee, and one would assume the distributions would have been made by Nelva before she resigned had she truly wanted them to be made. Nevertheless, even if the allegation that Nelva instructed that the distributions be made is accepted as true, that does not relieve Anita of her fiduciary obligations under the provisions of the Family Trust. There is nothing in the Family Trust authorizing Anita to make such distributions on Nelva's instruction.

[13] This is the case without even examining the self-dealing nature of a number, if not all, of the transfers.

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if such a distribution had been authorized under certain standards, no attempt was even made to meet those standards because it was again done, without regard to the standards, but allegedly at Nelva's instruction. (Exhibit 6, Response to Interrogatory number 2). Moreover, there is further evidence that the transfer allegedly to "pay off/fix house" was not necessary, because Anita's summary indicates Carole had already been paid $20,000 from the Family Trust on October 1, 2010 for either a loan or a gift to "fix house" (Exhibit 5, p. P12169).

First of all, the transfer of Exxon stock did not properly meet the guidelines for all distributions from the Decedent's Trust which required the trustee to "give primary consideration to the Surviving Founder's health, education, maintenance and support, and thereafter to our descendants health, education, maintenance and support." (Exhibit 1, p. P268, Article IX, Section B). And since this was, at best, a discretionary distribution, the following guidelines had to be met:

> "Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.
>
> Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts *according to the respective needs of the Decedent's Trust beneficiaries* and shall not be charged against a beneficiary's ultimate share of trust property." (emphasis added) (Exhibit 1, p. P269, Article IX, Section C).

As stated, the beneficiary most in need of assistance, other than Nelva, was Carl but he received nothing. Since none of the transfers of stock met the standards required by the terms of the Family Trust, Anita, as the trustee making these distributions, is liable, as a matter of law, for all

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such distributions, including the one to Carole from the Decedent's Trust. And pursuant to Tex. Prop. Code §114.031, the beneficiaries receiving the improper distributions are also responsible for the damages caused by the distributions once those damages are established. That section provides as follows:

> (a) A beneficiary is liable for loss to the trust if the beneficiary has:
>
> (1) misappropriated or otherwise wrongfully dealt with the trust property;
>
> (2) expressly consented to, participated in, or agreed with the trustee to be liable for a breach of trust committed by the trustee;
>
> (3) failed to repay an advance or loan of trust funds;
>
> (4) failed to repay a distribution or disbursement from the trust in excess of that to which the beneficiary is entitled; or
>
> (5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust.
>
> (b) Unless the terms of the trust provide otherwise, the trustee is authorized to offset a liability of the beneficiary to the trust estate against the beneficiary's interest in the trust estate, regardless of a spendthrift provision in the trust.

V.

Conclusion

The Qualified Beneficiary Designation of 8/25/10 fails, as a matter of law, as an attempted amendment to the Family Trust after the death of one of the founders. The transfers by Anita of significant stock holdings to the detriment of Nelva and the exclusion of Carl notwithstanding his

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life-threatening illness were not authorized by the terms of the Family Trust and, as a matter of law, create liability for Anita as trustee and for the beneficiaries who, at a minimum, have received distributions in excess of that to which they are allowed under the terms of the Family Trust.

WHEREFORE, PREMISES CONSIDERED, Carl requests that the Court grant his Motion for Partial Summary Judgment, and for such other and further relief to which Carl may be entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless
Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Drina Brunsting, attorney-in-fact for Carl Henry Brunsting

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 9th day of July, 2015, as follows:

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
via U.S. First Class Mail

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
via U.S. First Class Mail

Stephen A. Mendel
Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
via U.S. First Class Mail

Candace Curtis, *Pro Se*
218 Landana St.
American Canyon, California 94503
via U.S. First Class Mail

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

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NO. 412.249-401

ESTATE OF	§	**IN PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	**IN PROBATE COURT**
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	**NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS**

AFFIDAVIT OF BOBBIE G. BAYLESS
IN SUPPORT OF CARL HENRY BRUNSTING'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

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THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned official, on this day personally appeared BOBBIE G. BAYLESS, who is personally known to me, and first being duly sworn according to law, upon her oath deposed and said:

A. "My name is BOBBIE G. BAYLESS. I am over eighteen years of age, have never been convicted of a crime, and am fully competent to make this affidavit. I have personal knowledge of the statements contained herein, which are all true and correct.

B. I am an attorney with the law firm of Bayless & Stokes and the attorney representing Drina Brunsting as attorney-in-fact for Carl Henry Brunsting, individually ("Carl") in this action.

C. In the course of my representation of Carl, I have obtained the following documents, true and correct copies of which are attached to Carl's motion:

1. The Restatement of The Brunsting Family Living Trust dated January 12, 2005 provided by Vacek & Freed (P317-403) (Exhibit 1)

2. The First Amendment to the Restatement to the Brunsting Family Living Trust dated September 6, 2007 provided by Vacek & Freed (P444-445) (Exhibit 2)

3. The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated August 25, 2010 provided by Vacek & Freed (P407-443) (Exhibit 3)

4. Documents produced by Computershare in Carl's pre-suit discovery action filed on March 9, 2012 (P4308-4396) (Exhibit 4)

5. Schedule F from the summaries of transactions provided by Anita's counsel on March 27, 2012 (P12168-12170) (Exhibit 5)

6. Anita's Responses to Candace Louise Curtis' First Written Interrogatories in this proceeding (Exhibit 6)

7. Acceptance By Successor Trustee dated December 21, 2010 provided by Vacek & Freed (p. P446)
(Exhibit 7)

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/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

SWORN TO AND SUBSCRIBED before me on this the 9th day of July, 2015.

/s/ Shawn M. Teague
Notary Public in and for the
State of TEXAS
Printed Name: Shawn M. Teague
My Commission Expires: April 3, 2019

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Exhibit 1

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THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Prepared By

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

11511 Katy Freeway Suite 520
Houston, Texas 77079

Telephone: (281) 531-5800

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THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Article I

Our Family Living Trust

Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

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during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

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Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

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Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

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A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

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Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

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Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

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deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

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estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

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such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

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Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

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Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

1. Minimum Distribution

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

2. Distribution Restrictions

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

3. Exclusion of Older Adopted "Descendants"

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

4. Payment of Estate Taxes of Plan Participant

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

5. Delivery of Trust to Plan Administrator

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

6. Distribution to the Beneficiaries

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

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of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

7. Distribution of More Than the Minimum Distribution

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

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Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

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Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Section D. Residence Homestead

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

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3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

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Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

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of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

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2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

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Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

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Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

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Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

1. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

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2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

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Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

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2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

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Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

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3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

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1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

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The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

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b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

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c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

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Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

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If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

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appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

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Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

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ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

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iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

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i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

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However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

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3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

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CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

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BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

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In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

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TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

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will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

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such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

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Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

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2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

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Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

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Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

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Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

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Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

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2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

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The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Section E. Application to Founders

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

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Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

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Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

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Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

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Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

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Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

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The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

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Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

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The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

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the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

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The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

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Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

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The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

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by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

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Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

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Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

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newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

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Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

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4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

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10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

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Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

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Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

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Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

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Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

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as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

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Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

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THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas

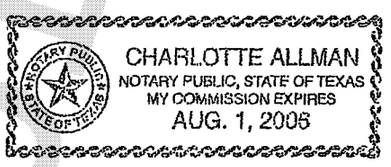

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Exhibit 2

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FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

Elmer H. Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Candace L Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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EXHIBIT "A"

Article IV

Our Trustees

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

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Exhibit 3

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QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT

Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

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the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust

DISTRIBUTION OF TRUST ASSETS

A. Beneficiaries

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

Beneficiaries	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
CARL HENRY BRUNSTING	1/5
ANITA KAY BRUNSTING	1/5

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B. Division into Separate Shares

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

1. Share for CANDACE LOUISE CURTIS

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

2. Share for CAROL ANN BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

3. Share for AMY RUTH TSCHIRHART

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

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RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

4. Share for CARL HENRY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

5. Share for ANITA KAY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

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to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

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7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

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successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

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the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

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but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

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Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

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thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

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for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

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business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

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as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

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make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

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PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the initial Trust Protector (except as limited by paragraph 4 below) in writing delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). The powers of removal under this paragraph may be limited by the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not

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require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

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incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

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The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

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custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

   a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

   b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

   c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

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state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

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inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:

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1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

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attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

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Exhibit 5 2015 08 25 Trust Agreement

B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

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Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

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be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

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Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

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the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

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7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

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most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

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separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

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the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

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not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

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Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

   a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

      (i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

      (ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

      (iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

      (iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

   b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

      (i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

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(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

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ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed

Notary Public, State of Texas

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Exhibit 4

Computershare

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Computershare Investor Services
250 Royall Street
Canton Massachusetts 02021
www.computershare.com

July 05, 2012

BOBBIE G BAYLESS
ATTORNEY AT LAW
BAYLESS & STOKES
2931 FERNDALE
HOUSTON TX 77096

Company Name: EXXON MOBIL CORPORATION / XOM
Holder Account Number: [redacted]2102
Registration: Elmer H Brunsting Or Nelva E Brunsting TR Brunsting Fam Living Trust UA 10/10/96

Dear Ms. Bayless:

We are in receipt of your correspondence dated April 12, 2012 and June 22, 2012 regarding the matter of Carl Henry Brunsting, cause number 2012-14538.

Please note that Computershare contacted your firm on May 7, 2012 seeking clarification of your request from April. We did not receive any reply until your letter of June 22, 2012.

Below is a list of all ExxonMobil accounts held by Elmer Brunsting, Nelva Brunsting, or the Brunsting Family Trust. We have provided the account balances as of July 3, 2012. The closing price for ExxonMobil's common stock on that date was $86.28 per share.

Account Number: [redacted]566 (Historical File)
Registration: ELMER H BRUNSTING
Total Shares Held on July 3, 2012: 0 (Closed October 28, 1996)

Account Number: [redacted]2102
Registration: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM LIVING TRUST UA 10/10/96
Total Shares Held on July 3, 2012: 0 (Closed March 24, 2011)

Account Number: [redacted]7769
Registration: ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING DECEDENT'S TRUST
Total Shares Held on July 3, 2012: 587.204777

Account Number: [redacted]7777
Registration: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST
Total Shares Held on July 3, 2012: 684.511319

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Below is a list of additional accounts which received transfers from one of the accounts listed above.

Account Number: [redacted]6387
Registration: CANDACE CURTIS
Total Shares Held on July 3, 2012: 24.981004

Account Number: [redacted]9041
Registration: AMY R BRUNSTING
Total Shares Held on July 3, 2012: 104.058674

Account Number: [redacted]6352
Registration: ANITA BRUNSTING
Total Shares Held on July 3, 2012: 164.036963

Account Number: [redacted]6328
Registration: CAROLE A BRUNSTING
Total Shares Held on July 3, 2012: 1,325

Account Number [redacted]1566

This account was first opened on February 17, 1984. At that time, 300 shares of ExxonMobil's common stock were transferred to Elmer Brunsting. On August 14, 1987, the company went through a 2-for-1 split, generating an additional 300 shares. Between September 10, 1992 and October 28, 1996, dividends from this account were reinvested. An additional 121.648 were purchased during that period.

The account was closed on October 28, 1996, when all shares (721.648) were transferred to the Brunsting Family Trust (See account number [redacted]2102 below).

We have enclosed a certificate transcript and reinvestment statement covering the history of this account. Due to the age of this account, we no longer have any additional documentation. We were unable to determine the source of the original transfer in 1984 and we no longer have copies of the paperwork submitted in 1996. We have no record of the dividends paid prior to 1992 or any of the tax forms generated for this account.

Account Number [redacted]2102

This account was first opened on October 28, 1996, when the 721.648 shares were transferred from the account listed above. We have enclosed copies of the statements covering the full history from 1996 until it was closed in 2011. The only transactions that took place during this time were dividend reinvestments and 2 stock splits. We have also enclosed copies of Form 1099-DIV for years 2005 through 2011. We no longer have copies of the tax forms generated prior to 2005.

On March 18, 2011, we received a letter from Anita Brunsting, along with transfer forms requesting that we transfer a portion of this account to the Elmer H Brunsting Decedent's Trust and transfer the remaining shares to the Nelva E Brunsting Survivor's Trust. On March 24, 2011, 1908.232008 were shares transferred to account number [redacted]7769 and 2101.968469 shares were transferred to account number [redacted]7777.

We have enclosed a copy of the transfer forms and the accompanying letter. The mailing address on the old account was updated at the same time. We have also enclosed a copy of a notice confirming the address change.

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Account Number [redacted]7769

This account was first opened on March 24, 2011, when the 1908.232008 shares were transferred from the account listed above. We have enclosed statements covering the history of the account from that date to the present. As the new account was not initially enrolled in the dividend reinvestment plan, the fractional shares (0.232008 shares) were immediately liquidated, generating a check in the amount of $4.18.

Dividends were paid via direct deposit between June 10, 2011 and March 9, 2012. They were deposited into Bank of America account number [redacted]1143 via routing number 111000025 based on instructions submitted through our website. We have enclosed a screen print of Computershare's internal records with the details of these payments, a notice confirming the direct deposit information, and a copy of Form 1099-DIV for 2011.

On June 13, 2011, we received transfer forms directing us to transfer 1,325 shares from this account to Carole Brunsting. The shares were transferred to account number [redacted]6328 on June 15, 2011. We have enclosed a copy of the forms.

On March 3, 2012, the account was enrolled in dividend reinvestment through our website. We have enclosed a copy of a notice confirming this change. The June 11, 2012 divided was reinvested, as indicated on the most recent statement.

Account Number [redacted]7777

This account was first opened on March 24, 2011, when the 2101.968469 shares were transferred from account number [redacted]2102. We have enclosed statements covering the history of the account from that date to the present.

All dividends on this account were reinvested. Form 1099-DIV is included on the year end statement for 2011. Direct deposit instructions were added to this account via our website on April 11, 2011. However, as the account was enrolled in the reinvestment plan, no dividends from this account were ever direct deposited. We have enclosed a copy of the notice confirming the direct deposit information.

On May 9, 2011, we received transfer forms directing us to transfer 1,120 shares from this account to Amy Brunsting. The shares were transferred to account number [redacted]9041 on May 11, 2011. We have enclosed a copy of the forms.

On June 13, 2011, we received transfer forms directing us to transfer 160 shares from this account to Anita Brunsting and 160 shares to Candace Curtis. The shares were transferred to account numbers [redacted]6352 and [redacted]6387 respectively on June 15, 2011. We have enclosed a copy of the forms.

We have no record of any additional transactions or correspondence on these accounts or any additional accounts registered to Elmer Brunsting, Nelva Brunsting, or their trusts.

Account Numbers [redacted]6387, [redacted]9041, [redacted]6352, and [redacted]16328

As you requested documents reflecting the current ownership of shares formerly registered to the trust, we have enclosed a copy of the most recent statement for each of these accounts. If you need additional records from these accounts, please submit a new request clarifying what information or documents are to be provided.

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Computershare assesses a fee of $10.00 plus $0.25 per page for records sent in response to this type of request. We kindly ask that you submit a check in the amount of $24.25 made payable to "Computershare" and enclose a copy of this letter so we may accurately reference the original inquiry.

If you have any further questions, please contact us by phone at 800-252-1800. Representatives are available Monday through Friday, 8:30 AM to 5:00 PM Eastern Time.

Sincerely,

Norborth W ~~McKearney~~
Manager
Computershare Shareholder Services

REF: BMV/UIB0001256900

Enclosures: Copy of Received Documents, Certificate Transcript, Statements, Forms 1099-DIV, Transfer Paperwork (4), Address Change Confirmation, Screen Print, Direct Deposit Confirmations (2), Dividend Reinvestment Confirmation

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P4311

BOBBIE GRACE BAYLESS *
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TEXAS BOARD OF LEGAL SPECIALIZATION
NATIONAL BOARD OF TRIAL ADVOCACY
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* DALIA BROWNING STOKES
BOARD CERTIFIED ESTATE PLANNING & PROBATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
stokes@baylessstokes.com
*LICENSED IN TEXAS AND COLORADO

June 22, 2012

Sent via Federal Express

Computershare Investor Services, LLC
Attn: Legal Department
250 Royall Street
Canton, MA 02021

Re: Cause No. 2012-14538; ***In re: Carl Henry Brunsting***; In the 80th Judicial District Court of Harris County, Texas

Dear Sirs:

On April 12, 2012, after speaking with Catherine Dixon in your department, I sent additional documents and information relating to a request for information in the above-referenced case concerning the history of some Exxon Mobil Corporation stock. I have heard nothing further since that letter. I have enclosed a copy of that earlier letter and the Court's Order requiring Computershare to provide the information requested, as well as another copy of Exhibit E from the verified petition which outlines the requested information.

As you can see, in my April 12, 2012 letter, I also provided social security numbers for the individuals who originally owned the stock, but at some point the stock was moved to trusts and thereafter, at least in part, out to other parties. So to the extent your delay in responding has been because of the trusts' ownership of the stock, I wanted to provide you with that additional information. Initially, the trust would have been referred to as "The Brunsting Family Living Trust," but after the first grantor of that trust died, the names of "The Nelva Brunsting Survivor's Trust" and the "Elmer Brunsting Decedent's Trust" would have been used. I am enclosing statements with holder account numbers which I have obtained from other sources in the case in hopes that it will speed up your search. I do not intend, however, for your search to be limited to these accounts because, as I said, I believe these shares have been held by or transferred to other parties as well.

It has been sometime since this request was made. I need these documents as soon as possible, so if you have any questions, please contact me upon your receipt of this letter.

Very truly yours,

Bobbie G. Bayless

BGB/st
Enclosures
cc: Carl Brunsting (via email)

P4312

NOT FOR RELEASE

EFILED: 4/20/2012 5:08:09 PM 29232

BOBBIE GRACE BAYLESS *
BOARD CERTIFIED CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
NATIONAL BOARD OF TRIAL ADVOCACY
bayless@baylessstokes.com

BAYLESS & STOKES
ATTORNEYS AT LAW
2931 FERNDALE
HOUSTON, TEXAS 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218

* DALIA BROWNING STOKES
BOARD CERTIFIED ESTATE PLANNING & PROBATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
stokes@baylessstokes.com
*LICENSED IN TEXAS AND COLORADO

April 12, 2012

Sent via Federal Express

Computershare Investor Services, LLC
Attn: Legal Department
250 Royall Street
Canton, MA 02021

Re: Cause No. 2012-14538; ***In re: Carl Henry Brunsting***; In the 80th Judicial District Court of Harris County, Texas

Dear Sirs:

I spoke with Catherine Dixon this morning about the following documents which were previously filed with the court in the above-referenced matter:

1. Carl Henry Brunsting's Verified Petition to Take Depositions Before Suit; and
2. Notice to Computershare Investor Services of Hearing on Petition to Take Depositions Before Suit.

While these documents were previously sent via certified mail to Computershare Investor Services's registered agent in Texas, we had received no response. We have enclosed another copy of the documents so this can be addressed by your legal department as soon as possible. To simplify things, we have also enclosed an extra copy of Exhibit E to the Petition which outlines the documents we are asking Computershare, as transfer agent for Exxon Mobil Corporation, to provide. The social security number for Elmer Brunsting is [redacted]8905. The social security number for Nelva Brunsting is [redacted]4685.

Also enclosed is an Amended Notice of Hearing which resets the hearing in the matter for May 18, 2012.

Very truly yours,

Bobbie G. Bayless

BGB/st
Enclosures

cc: Carl Brunsting (via email)

P4313

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UNOFFICIAL COPY

EXHIBIT E - 000001

Documents to be Produced by Computershare as transfer agent for Exxon Mobil Corporation

1. All documents reflecting the acquisition of any Exxon Mobil Corporation stock by Elmer Brunsting, Nelva Brunsting, and/or The Brunsting Family Living Trust.

2. All documents reflecting any transfers of all or any portion of the stock described in number 1 above.

3. All documents reflecting any sale or other liquidation of all or any portion of the stock described in number 1 above.

4. All documents reflecting the current ownership of all or any portion of the stock described in number 1 above.

5. All communications, including emails, concerning the stock described in number 1 above or any transfers of all or any portion of the stock described in number 1 above.

6. All documents authorizing the transfer of all or any portion of the stock described in number 1 above.

7. All documents evidencing the payment of dividends on the stock described in number 1 above.

EXHIBIT E

UNOFFICIAL COPY

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

010754

ELMER H BRUNSTING
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]1566 I ND

Ticker Symbol
CUSIP

Exxon Mobil Corporation - Certificate Transcript

COMMON STOCK as of 06 Jul 2012

Issue Date	Acquisition Date	Number of Shares	Certificate Number	Issuance Reason	Surrender Date	Surrender Reason	Covered/ Noncovered	Cost Basis (USD)
17 Feb 1984	17 Feb 1984	300.000000	00505201	Transfer	28 Oct 1996	Transfer	Noncovered	
14 Aug 1987	14 Aug 1987	300.000000	00201326		28 Oct 1996	Transfer	Noncovered	

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURES AND DEFINITIONS.

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001CS0003.dss.mix.042034_3674/010754/014652/i

07320150 0000 0000 0000

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

001333

ELMER H BRUNSTING
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]1566

SSN/TIN Certified: Yes
Symbol: XOM

001C80003.dat.mix.075233_3612/001333/00015206

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]1566

▶ ACCOUNT SUMMARY

As of close of stock market on 04 May 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	0.000000	0.000000	84.570000	0.00

Transaction History

From: 01 Jan 1984 To: 04 May 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							0.000000
10 Sep 1992	Dividend Reinvestment	432.00			432.00	63.160000	6.840000	6.840000
10 Dec 1992	Dividend Reinvestment	436.92			436.92	59.927000	7.291000	14.131000
10 Mar 1993	Dividend Reinvestment	442.17			442.17	64.149000	6.893000	21.024000
10 Jun 1993	Dividend Reinvestment	447.14			447.14	65.946000	6.780000	27.804000
10 Sep 1993	Dividend Reinvestment	452.02			452.02	65.077000	6.946000	34.750000
10 Dec 1993	Dividend Reinvestment	457.02	Transaction Fee	0.18	457.02	62.528000	7.309000	42.059000
10 Mar 1994	Dividend Reinvestment	462.28	Transaction Fee	0.18	462.28	65.507000	7.057000	49.116000
10 Jun 1994	Dividend Reinvestment	467.36	Transaction Fee	0.19	467.36	61.520000	7.597000	56.713000
10 Sep 1994	Dividend Reinvestment	472.83	Transaction Fee	0.20	472.83	59.665000	7.925000	64.638000
10 Dec 1994	Dividend Reinvestment	498.48	Transaction Fee	0.21	498.48	60.539000	8.234000	72.872000
10 Mar 1995	Dividend Reinvestment	504.65	Transaction Fee	0.20	504.65	63.969000	7.889000	80.761000
10 Jun 1995	Dividend Reinvestment	510.57	Transaction Fee	0.18	510.57	70.975000	7.194000	87.955000
11 Sep 1995	Dividend Reinvestment	515.97	Transaction Fee	0.18	515.97	70.416000	7.327000	95.282000
11 Dec 1995	Dividend Reinvestment	521.46	Transaction Fee	0.16	521.46	80.033000	6.516000	101.798000
11 Mar 1996	Dividend Reinvestment	526.35	Transaction Fee	0.16	526.35	80.978000	6.500000	108.298000
10 Jun 1996	Dividend Reinvestment	559.56	Transaction Fee	0.17	559.56	84.740000	6.603000	114.901000
10 Sep 1996	Dividend Reinvestment	564.77	Transaction Fee	0.17	564.77	83.704000	6.747000	121.648000
28 Oct 1996	Book Or Plan Transfer						-121.648000	0.000000

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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DO NOT COPY

17-20360.408

[redacted]1566 IND

XOM 193UDR

07-320-5-6809-P027

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

Sell this number of shares. Shares may be a combination of DRS and Plan shares.

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under each plan or DRS service)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Shares will be sold as promptly as practicable based on the terms of the plan. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST. PLEASE REFER TO THE PLAN PROSPECTUS/BROCHURE OR DRS BROCHURE REGARDING APPLICABLE FEES.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. ***Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a certified copy of the corporate resolution/partnership agreement.** A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is (are) legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00TPQA (Rev. 8/11)

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001244

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CS0003.des1.mix.075233_3612/001244/001426

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

▶ ACCOUNT SUMMARY

As of close of stock market on 31 Dec 2004

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	3,522.422000	3,522.422000		

Transaction History

From: 01 Jan 1996 To: 31 Dec 2004

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							0.000000
28 Oct 1996	Book Or Plan Transfer						721.648000	721.648000
10 Dec 1996	Dividend Reinvestment	570.10	Comp Paid Fees	0.15	570.10	94.640000	6.024000	727.672000
10 Mar 1997	Dividend Reinvestment	574.86	Comp Paid Fees	0.14	574.86	100.855000	5.700000	733.372000
11 Apr 1997	Stock Split						733.372000	1,466.744000
10 Jun 1997	Dividend Reinvestment	601.37	Comp Paid Fees	0.25	601.37	60.491000	9.941000	1,476.685000
10 Sep 1997	Dividend Reinvestment	605.44	Comp Paid Fees	0.24	605.44	64.063000	9.451000	1,486.136000
10 Dec 1997	Dividend Reinvestment	609.32	Comp Paid Fees	0.24	609.32	62.920000	9.684000	1,495.820000
10 Mar 1998	Dividend Reinvestment	613.29	Comp Paid Fees	0.24	613.29	63.134000	9.714000	1,505.534000
10 Jun 1998	Dividend Reinvestment	617.27	Comp Paid Fees	0.22	617.27	70.338000	8.776000	1,514.310000
10 Sep 1998	Dividend Reinvestment	620.87	Comp Paid Fees	0.24	620.87	65.712000	9.448000	1,523.758000
10 Dec 1998	Dividend Reinvestment	624.74	Comp Paid Fees	0.22	624.74	72.087000	8.666000	1,532.424000
10 Mar 1999	Dividend Reinvestment	628.29	Comp Paid Fees	0.23	628.29	68.630000	9.155000	1,541.579000
10 Jun 1999	Dividend Reinvestment	632.05	Comp Paid Fees	0.20	632.05	80.103000	7.890000	1,549.469000
10 Sep 1999	Dividend Reinvestment	635.26	Comp Paid Fees	0.20	635.26	79.900000	7.951000	1,557.420000
10 Dec 1999	Dividend Reinvestment	685.26	Comp Paid Fees	0.20	685.26	83.759000	8.181000	1,565.601000
10 Mar 2000	Dividend Reinvestment	688.86	Comp Paid Fees	0.22	688.86	76.740000	8.977000	1,574.578000
10 Jun 2000	Dividend Reinvestment	692.81	Comp Paid Fees	0.22	692.81	80.380000	8.621000	1,583.199000
11 Sep 2000	Dividend Reinvestment	696.61	Comp Paid Fees	0.21	696.61	83.141000	8.379000	1,591.578000
11 Dec 2000	Dividend Reinvestment	700.29	Comp Paid Fees	0.20	700.29	88.469000	7.916000	1,599.494000

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

P4319

17-20360.410

[redacted]2102 SL1 FID

XOM
214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

[ ]

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use **section 1A** above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use **section 1B** above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use **section 1C** above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign **section 1D** for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use **section 2** below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- **Please write your holder account number and the company name on your check.**
- **This form should ONLY be used for Exxon Mobil Corporation.**
- **The enclosed contribution will ONLY be applied to the account referenced to the right.**

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
Holder Account Number

[redacted]2102 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4320

00000000XOM SPP1 [redacted]2102

07-520156-080-5080-0025-4029

17-20360.411

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM LIVING TRUST UA 10/10/96

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CS0003.dss1.mix.075233_3612/000144/001427/i

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

Transaction History (cont.)

From: 01 Jan 1996 To: 31 Dec 2004

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
09 Mar 2001	Dividend Reinvestment	703.78	Comp Paid Fees	0.21	703.78	83.855000	8.393000	1,607.887000
11 Jun 2001	Dividend Reinvestment	707.47	Comp Paid Fees	0.20	707.47	89.824000	7.876000	1,615.763000
11 Jul 2001	Dividend Reinvestment	32.32	Comp Paid Fees	0.01	32.32	86.512000	0.374000	1,616.137000
18 Jul 2001	Stock Split						1,615.763000	3,231.900000
18 Jul 2001	Stock Dividend						0.374000	3,232.274000
10 Sep 2001	Dividend Reinvestment	743.42	Comp Paid Fees	0.45	743.42	40.865000	18.192000	3,250.466000
10 Dec 2001	Dividend Reinvestment	747.61	Comp Paid Fees	0.49	747.61	38.016000	19.666000	3,270.132000
11 Mar 2002	Dividend Reinvestment	752.13	Comp Paid Fees	0.44	752.13	42.803000	17.572000	3,287.704000
10 Jun 2002	Dividend Reinvestment	756.17	Comp Paid Fees	0.48	756.17	39.381000	19.211000	3,306.915000
10 Sep 2002	Dividend Reinvestment	760.59	Comp Paid Fees	0.56	760.59	33.853000	22.467000	3,329.382000
10 Dec 2002	Dividend Reinvestment	765.76	Comp Paid Fees	0.55	765.76	34.845000	21.976000	3,351.358000
10 Mar 2003	Dividend Reinvestment	770.81	Comp Paid Fees	0.56	770.81	34.524000	22.327000	3,373.685000
10 Jun 2003	Dividend Reinvestment	843.42	Comp Paid Fees	0.57	843.42	37.179000	22.685000	3,396.370000
10 Sep 2003	Dividend Reinvestment	849.09	Comp Paid Fees	0.56	849.09	38.140000	22.262000	3,418.632000
10 Dec 2003	Dividend Reinvestment	854.66	Comp Paid Fees	0.58	854.66	37.024000	23.084000	3,441.716000
10 Mar 2004	Dividend Reinvestment	860.43	Comp Paid Fees	0.51	860.43	42.252000	20.364000	3,462.080000
10 Jun 2004	Dividend Reinvestment	934.76	Comp Paid Fees	0.54	934.76	43.618000	21.431000	3,483.511000
10 Sep 2004	Dividend Reinvestment	940.55	Comp Paid Fees	0.50	940.55	47.071000	19.982000	3,503.493000
10 Dec 2004	Dividend Reinvestment	945.94	Comp Paid Fees	0.47	945.94	49.974000	18.929000	3,522.422000

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

P4321

UNOFFICIAL COPY

[redacted]2102 SL1 FID XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the appropriate brochure for additional details on the terms and conditions of transactions under the plan or DRS you own)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use **section 1A** above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use **section 1B** above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use **section 1C** above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign **section 1D** for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use **section 2** below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
Holder Account Number

[redacted]2102 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4322

00000000XOM SPP1 [redacted]2102

Adv Version

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0475 0000 5102 8 0000 0000 0000

07 20:15:08:08 p.02 5 1023 1 0 2 4 5

ExxonMobil

STATEMENT OF HOLDINGS

December 13, 2005 Page 3 of 4

c/o EQUISERVE TRUST COMPANY, N.A.
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96

To access and manage your account, you can contact us :

By Internet: www.exxonmobil.equiserve.com

By Telephone: 800-252-1800

By Mail: COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

SAVE THIS STATEMENT FOR YOUR FINANCIAL RECORDS

How to read your statement.

EXXON MOBIL CORPORATION **Issue ID 330010 Account Number [redacted]1230**

Total Holdings and Market Value as of 12/09/2005

Security	COMMON	Market Price Per Share	$58.5000
Shares Held By You	0.0000	Market Value	$209,991.13
Shares Held By Agent	3,589.5920		
Total Account Shares	3,589.5920		

Year-To-Date Summary for 2005

Gross Dividends	$4,043.89
Tax Withheld	$0.00
Additional Income	$1.69

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P4324

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07/18/2015:0805:P0274

ExxonMobil

c/o COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

C019 12456 EC 372473 542663 1 1-------- HV3300E1.J13780.0001.542663 33001031253471458 1099DIV XMIT 834

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96
13630 PINEROCK
HOUSTON, TX 77079-5914

Instructions for Recipient

Account Number. May show an account or other unique number the payer assigned to distinguish your account.
Box 1a. Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.
The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A but treat it as a plan distribution, not as investment income, for any other purpose.
Box 1b. Shows the portion of the amount in box 1a that may be eligible for the 16% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.
Box 2a. Shows total capital gain distributions (long-term)from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13. But, if no amount is shown in boxes 2c-2dand your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.
Box 2b. Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet-Line19 in the Schedule D Instructions (Form 1040).
Box 2c. Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion. See the Schedule D (Form 1040) instructions.
Box 2d. Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet-Line18 in the instructions for Schedule D (Form 1040).
Box 3. Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.
Box 4. Shows backup withholding. For example, a payer must backup withhold on certain payments at a 28% rate if you did not give your taxpayer identification number to the payer. See Form W-9,Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.
Box 5. Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.
Box 6. Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.
Boxes 8 and 9. Shows cash and noncash liquidation distributions.
Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIVwith the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIVto each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.

PAYER'S name, street address, city, state, ZIP code and telephone no.

EXXON MOBIL CORPORATION
c/o COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008
800-252-1800

RECIPIENT'S name, street address, city, state, and ZIP code

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96
13630 PINEROCK
HOUSTON, TX 77079-5914

☐ CORRECTED (if checked)

Dividends and Distributions

1a Total ordinary dividends $ 4,045.58	1b Qualified dividends $ 4,045.58
2a Total capital gain distr. $ 0.00	2b Unrecap. Sec. 1250 gain $ 0.00
2c Section 1202 gain $ 0.00	2d Collectibles (28%) gain $ 0.00
3 Nondividend distributions $ 0.00	4 Federal income tax withheld $ 0.00
5 Investment expenses $ 0.00	6 Foreign tax paid $ 0.00
7 Foreign country or U.S possession	8 Cash liquidation distributions $ 0.00
9 Noncash liquidation distributions $ 0.00	PAYER'S Federal identification number [redacted]9005
RECIPIENT'S identification number [redacted]8905	Account Number (see instructions) [redacted]1230

OMB No. 1545-0110

2005

Form **1099-DIV**

Copy B For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4345

Form 1099-DIV(keep for your records)

E1099T

UNOFFICIAL DOCUMENT

07132015:0809:P02245

ExxonMobil

033426

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Computershare

Computershare Trust Company, N.A.
250 Royall Street
Canton Massachusetts 02021
Within the US, Canada & Puerto Rico 800 252 1800
Outside the US, Canada & Puerto Rico 781 575 2058
www.computershare.com/exxonmobil

Holder Account Number
[redacted]2102 FID

SSN/TIN Certified Yes
Symbol XOM

001CS0006_RPS.DLTX.XOM.01128_8364033436036642A

Exxon Mobil Corporation - Statement of Holdings

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

Dividend Information

Record Date	Payment Date	Class Description	Shares/Units Participating in Dividend Reinvestment	Dividend Rate ($)	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
13 Nov 2006	11 Dec 2006	Common	3,645.057000	0.320000	1,166.42		1,166.42

Transaction History

From: 01 Jan 2006 To: 11 Dec 2006

Date	Transaction Description	Transaction Amount ($)	Deduction Amount ($)	Deduction Type	Net Amount ($)	Price Per Share/Unit ($)	Total Transaction Shares/Units	Total Shares/Units Held
Plan Transactions Dspp - Common Stock								
01 Jan 2006	Balance Forward							3,589.592000
10 Mar 2006	Dividend Reinvestment	1,148.67	0.48	Comp Paid Fees	1,148.67	60.043000	19.131000	3,608.723000
09 Jun 2006	Dividend Reinvestment	1,154.79	0.48	Comp Paid Fees	1,154.79	60.103000	19.214000	3,627.937000
11 Sep 2006	Dividend Reinvestment	1,160.94	0.43	Comp Paid Fees	1,160.94	67.812000	17.120000	3,645.057000
11 Dec 2006	Dividend Reinvestment	1,166.42	0.38	Comp Paid Fees	1,166.42	76.781302	15.191459	3,660.248459

Summary of Holdings

Date: 11 Dec 2006

Class Description	Certificated Shares/Units Held By You	Direct Registration/ Book Shares/Units	Dividend Reinvestment Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Value ($)
Dspp - Common Stock	0.000000	0.000000	3,660.248459	3,660.248459	75.360000	275,836.32

43UDR

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

XOM

00H5JA

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

☐ CORRECTED (if checked)

Dividends and Distributions

1a Total ordinary dividends	1b Qualified dividends
$ 4632.59	$ 4632.59
3 Nondividend distributions	4 Federal income tax withheld
$	$
6 Foreign tax paid	7 Foreign country or U.S. possession
$	
8 Cash Liquidation Distribution	PAYER'S Federal identification number
$	[redacted]0005
RECIPIENT'S identification number	Account number (see instructions)
[redacted]8905	[redacted]2102

OMB No. 1545-0110

2006

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4326

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

Amount Paid By Check/EFT	Amount Reinvested
$ 0	$ 4630.82
Company Paid Fees	Company Paid Service Charges
$ 1.77	$
Discount on Reinvestment	
$	

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

SCANNED

[redacted]2102 XOM
SL1 FID 161UDR +

A Partial Withdrawal (continue participation in the Plan); AND

ISSUE A CERTIFICATE FOR THIS NUMBER OF WHOLE SHARES [ ] OR *SELL THIS NUMBER OF SHARES [ ]

If you have Direct Registration Shares(DRS) and you have requested to sell a specific amount of shares, the Direct Registration Shares will be sold prior to your Plan shares. If you selected for all of your shares to be sold, we will sell both your DRS and Plan shares.

B Full Withdrawal (terminate participation in the Plan); AND

ISSUE A CERTIFICATE FOR ALL FULL SHARES AND A CHECK FOR FRACTIONAL SHARES [ ] OR *SELL ALL SHARES [ ]

C Deposit Certificate(s)

PLEASE INDICATE THE NUMBER OF SHARES TO BE DEPOSITED INTO YOUR PLAN ACCOUNT. [ ]

Signature 1 - Please keep signature within the box. [ ]

Signature 2 - Please keep signature within the box. [ ]

Please note: All registered holders must sign for your instructions to be completed.

Please detach this portion and mail to:
Computershare
PO Box 43078
Providence RI 02940-3078 +

*For sales requests for Partnerships or Corporations, please have your signature(s) medallion guaranteed or provide us with a copy of the corporate resolution/partnership agreement.

Computershare Trust Company, N.A., as agent, upon written request, will provide the name of the executing broker dealer associated with the transaction(s), and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction(s), if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST. PLEASE REFER TO THE PLAN PROSPECTUS/BROCHURE REGARDING APPLICABLE FEES.

I. Special Instructions

If you wish to have sale proceeds sent electronically to your financial institution please confirm the correct wire instructions with your financial institution. The wire instructions should include the bank name, address, bank account name, bank account number, and the bank's nine digit fed wire routing number. A written request to sell along with this information should be provided to Computershare. For foreign wires, please include the swift code and the bank code. The written instructions should be signed by all shareholders with a Medallion Guarantee Stamp. Please note you can also sell your shares and choose to have the funds wired by visiting the website on the front of this form and accessing your Investor Centre account. A $35.00 fee will be deducted from proceeds for a domestic wire and a $50.00 fee will be deducted from proceeds for a foreign wire.

If you wish to have the proceeds sent via courier service, a $20.00 fee will be deducted from your proceeds. Funds cannot be delivered to a P.O. Box or P.O. Zip codes.

If you want a certificate or check issued to someone other than the registered holder, you must include the name, address, date of birth and social security number of the person to whom the ownership is being transferred. Your signature(s) on the tear off section must be guaranteed by a member of a medallion signature program (bank or broker) approved by the Securities Transfer Association, Inc. A Notary public is not acceptable.

If you would like to write to us, please include your account number, daytime telephone number with area code, and the company name in your correspondence.

PLEASE KEEP THIS STATEMENT FOR COST BASIS AND TAX PURPOSES.

II. Terms and Definitions

Note: Some definitions outlined below may not pertain to your investment Plan.

SSN/TIN Certified	If your account is not certified, you must complete a W-9 or W-8BEN tax form or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Faxed W-8BEN forms are not acceptable.
Record Date	The date that establishes ownership on our records to receive the dividend.
Payment Date	The date the dividend is payable.
Dividend Rate	The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.
Price Per Share	The price per share purchased or sold under the plan.
Total Transaction Shares	The number of shares acquired or sold through the plan.
Deduction Amount	An aggregate sum of all fees charged.
Value	The dollar amount as of the date referenced of all shares that are held for this security in the account.

III. Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

CONKBA

Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for in formation on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 8: Shows cash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2006 General Instructions for Forms 1099, 1098, 5498, and W-2G.

P4327

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ExxonMobil

Computershare
Computershare Trust Company, N.A.
250 Royall Street
Canton Massachusetts 02021
Within the US, Canada & Puerto Rico 800 252 1800
Outside the US, Canada & Puerto Rico 781 575 2058
www.computershare.com/exxonmobil

001542

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

*******AUTO**SCH 5-DIGIT 77079 000000006/000001542

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]2102 FID

SSN/TIN Certified Yes
Symbol XOM

001CS0006_RPS.DLTX_PG1.XOM.131322_15368/001542/001542A

Exxon Mobil Corporation - Statement of Holdings

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

Dividend Information

Holder Account Number: [redacted]2102

Record Date	Payment Date	Class Description	Shares/Units Participating in Dividend Reinvestment	Dividend Rate ($)	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
09 Nov 2007	10 Dec 2007	Common	3,707.094361	0.350000	1,297.48		1,297.48

Transaction History

From: 01 Jan 2007 To: 10 Dec 2007

Date	Transaction Description	Transaction Amount ($)	Deduction Amount ($)	Deduction Type	Net Amount ($)	Price Per Share/Unit ($)	Total Transaction Shares/Units	Total Shares/Units Held
Plan Transactions DSPP - Common Stock								
01 Jan 2007	Balance Forward							3,660.248459
09 Mar 2007	Dividend Reinvestment	1,171.28	0.41	Comp Paid Fees	1,171.28	70.917151	16.516174	3,676.764633
11 Jun 2007	Dividend Reinvestment	1,286.87	0.39	Comp Paid Fees	1,286.87	83.331627	15.442756	3,692.207389
10 Sep 2007	Dividend Reinvestment	1,292.27	0.37	Comp Paid Fees	1,292.27	88.805431	14.886972	3,707.094361
10 Dec 2007	Dividend Reinvestment	1,297.48	0.36	Comp Paid Fees	1,297.48	89.793867	14.449539	3,721.543900

Summary of Holdings

Date: 10 Dec 2007

Class Description	Certificated Shares/Units Held By You	Direct Registration/ Book Shares/Units	Dividend Reinvestment Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Value ($)
DSPP - Common Stock	0.000000	0.000000	3,721.543900	3,721.543900	92.030000	342,493.69

[redacted]

43UDR

IMPORTANT TAX RETURN DOCUMENT ATTACHED

XOM

00H5JA

Please see important PRIVACY NOTICE on reverse side of statement

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Form 1099-DIV (keep for your records)

☐ CORRECTED (if checked)

Dividends and Distributions

1a Total ordinary dividends	1b Qualified dividends
$ 5049.43	$ 5049.43
3 Nondividend distributions	4 Federal income tax withheld
$	$
6 Foreign tax paid	7 Foreign country or U.S. possession
$	
8 Cash Liquidation Distribution	PAYER'S Federal identification number
$	[redacted]9005
RECIPIENT'S identification number	Account number (see instructions)
[redacted]8905	[redacted]2102

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

Amount Paid By Check/EFT	Amount Reinvested
$ 0	$ 5047.90
Company Paid Fees	Company Paid Service Charges
$ 1.53	$ 0
Discount on Reinvestment	
$ 0	

OMB No. 1545-0110

2007

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4328

Department of the Treasury - Internal Revenue Service

17-20360.419

[redacted]2102

SL1 FID

XOM
161UDR +

A Partial Withdrawal (continue participation in the Plan); AND

ISSUE A CERTIFICATE FOR THIS NUMBER OF WHOLE SHARES

OR

*SELL THIS NUMBER OF SHARES

If you have Direct Registration Shares(DRS) and you have requested to sell a specific amount of shares, the Direct Registration Shares will be sold prior to your Plan shares. If you selected for all of your shares to be sold, we will sell both your DRS and Plan shares.

B Full Withdrawal (terminate participation in the Plan); AND

ISSUE A CERTIFICATE FOR ALL FULL SHARES AND A CHECK FOR FRACTIONAL SHARES

OR

*SELL ALL SHARES

C Deposit Certificate(s)

PLEASE INDICATE THE NUMBER OF SHARES TO BE DEPOSITED INTO YOUR PLAN ACCOUNT.

Signature 1 - Please keep signature within the box.

Signature 2 - Please keep signature within the box.

Please note: All registered holders must sign for your instructions to be completed.

Please detach this portion and mail to:
Computershare
PO Box 43078
Providence RI 02940-3078 +

*For sales requests for Partnerships or Corporations, please have your signature(s) medallion guaranteed or provide us with a copy of the corporate resolution/partnership agreement. Computershare Trust Company, N.A., as agent, upon written request, will provide the name of the executing broker dealer associated with the transaction(s), and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction(s), if any.

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I. Special Instructions

If you wish to have sale proceeds sent electronically to your financial institution please confirm the correct wire instructions with your financial institution. The wire instructions should include the bank name, address, bank account name, bank account number, and the bank's nine digit fed wire routing number. A written request to sell along with this information should be provided to Computershare. For foreign wires, please include the swift code and the bank code. The written instructions should be signed by all shareholders with a Medallion Guarantee Stamp. Please note you can also sell your shares and choose to have the funds wired by visiting the website on the front of this form and accessing your Investor Centre account. A $35.00 fee will be deducted from proceeds for a domestic wire and a $50.00 fee will be deducted from proceeds for a foreign wire.

If you wish to have the proceeds sent via courier service, a $20.00 fee will be deducted from your proceeds. Funds cannot be delivered to a P.O. Box or P.O. Zip codes.

If you want a certificate or check issued to someone other than the registered holder, you must include the name, address, date of birth and social security number of the person to whom the ownership is being transferred. Your signature(s) on the tear off section must be guaranteed by a member of a medallion signature program (bank or broker) approved by the Securities Transfer Association, Inc. A Notary public is not acceptable.

If you would like to write to us, please include your account number, daytime telephone number with area code, and the company name in your correspondence.

PLEASE KEEP THIS STATEMENT FOR COST BASIS AND TAX PURPOSES.

II. Terms and Definitions

Note: Some definitions outlined below may not pertain to your investment Plan.

SSN/TIN Certified	If your account is not certified, you must complete a W-9 or W-8BEN tax form or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Faxed W-8BEN forms are not acceptable.
Record Date	The date that establishes ownership on our records to receive the dividend.
Payment Date	The date the dividend is payable.
Dividend Rate	The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.
Price Per Share	The price per share purchased or sold under the plan.
Total Transaction Shares	The number of shares acquired or sold through the plan.
Deduction Amount	An aggregate sum of all fees charged.
Value	The dollar amount as of the date referenced of all shares that are held for this security in the account.

III. Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

CONKBA

Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

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Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for in formation on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 8: Shows cash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.

P4329

Copy Not Official

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within the US, Canada & Puerto Rico 800 252 1800
Outside the US, Canada & Puerto Rico 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the state of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

*******AUTO**SCH 5-DIGIT 77079 000008/0001987 001987

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001C80006_RPS.DLTX_P01.XOM.23030_15784A001987/001987A

07 8270 15 0808 0 0 2102 0

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes, and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

▶ ACCOUNT SUMMARY

As of close of stock market on 10 Dec 2008

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	3,792.885209	3,792.885209	80.070000	303,696.32

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
12 Nov 2008	10 Dec 2008	0.400000	Common	3,773.427844	1,509.37		1,509.37

Transaction History

From: 01 Jan 2008 To: 10 Dec 2008

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
01 Jan 2008	Balance Forward							3,721.543900
10 Mar 2008	Dividend Reinvestment	1,302.54	Comp Paid Fees	0.38	1,302.54	85.864547	15.169707	3,736.713607
10 Jun 2008	Dividend Reinvestment	1,494.69	Comp Paid Fees	0.43	1,494.69	87.595979	17.063454	3,753.777061
10 Sep 2008	Dividend Reinvestment	1,501.51	Comp Paid Fees	0.49	1,501.51	76.409677	19.650783	3,773.427844
10 Dec 2008	Dividend Reinvestment	1,509.37	Comp Paid Fees	0.49	1,509.37	77.573197	19.457365	3,792.885209

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Form 1099-DIV (keep for your records)

☐ CORRECTED (if checked)

Dividends and Distributions

OMB No. 1545-0110

2008

Form 1099-DIV

1a Total ordinary dividends	1b Qualified dividends
$ 5809.80	$ 5809.90
3 Nondividend distributions	4 Federal income tax withheld
$	$
6 Foreign tax paid	7 Foreign country or U.S. possession
$	
8 Cash Liquidation Distribution	PAYER'S Federal identification number
$	[redacted]9005
RECIPIENT'S identification number	Account number (see instructions)
[redacted]8905	[redacted]2102

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

Amount Paid By Check/EFT	Amount Reinvested
$ 0	$ 5808.11
Company Paid Fees	Company Paid Service Charges
$ 1.79	$ 0
Discount on Reinvestment	
$ 0	

Department of the Treasury - Internal Revenue Service

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4330

UNOFFICIAL COPY

[redacted]2102 RN1 FID XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. If you have DRS shares, the DRS shares will be sold prior to your plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request a wire payment by updating your bank details online through Investor Centre at the website listed on the reverse side, or by including a written note with your bank's name, branch location and routing number, and your bank account name and number. For non-US wires, also include the SWIFT (bank routing ID) and bank codes. The signature(s) on the note must be stamped with a Medallion Signature Guarantee. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee. You can also call us to find out the cost to have the check delivered to a street address via courier service.

Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

COWA2A-MOT

Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.
What's New? The 5% capital gains rate is reduced to zero after December 31, 2007. See box 1b.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2008 General Instructions for Forms 1099, 1098, 5498, and W-2G.

P4331

17-20360.422

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

*******AUTO**SCH 5-DIGIT 77079 00001/0002392 002392

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_RPS.DLTX_PGI.XOM.194629_32948/002392/002392/6

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes, and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

▶ ACCOUNT SUMMARY

As of close of stock market on 10 Dec 2009

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	3,883.713924	3,883.713924	72.400000	281,180.89

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
12 Nov 2009	10 Dec 2009	0.420000	Common	3,861.777317	1,621.95		1,621.95

Transaction History

From: 01 Jan 2009 To: 10 Dec 2009

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							3,792.885209
10 Mar 2009	Dividend Reinvestment	1,517.15	Comp Paid Fees	0.59	1,517.15	64.343802	23.578806	3,816.464015
10 Jun 2009	Dividend Reinvestment	1,602.91	Comp Paid Fees	0.55	1,602.91	72.646344	22.064565	3,838.528580
10 Sep 2009	Dividend Reinvestment	1,612.18	Comp Paid Fees	0.58	1,612.18	69.344841	23.248737	3,861.777317
10 Dec 2009	Dividend Reinvestment	1,621.95	Comp Paid Fees	0.55	1,621.95	73.938054	21.936607	3,883.713924

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX

ExxonMobil

CORRECTED (if checked)

Dividends and Distributions

OMB No. 1545-0110

2009

Form 1099-DIV

Copy B For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4332

1a Total ordinary dividends	1b Qualified dividends
$ 6356.46	$ 6356.46
3 Nondividend distributions	4 Federal income tax withheld
$	$
6 Foreign tax paid	7 Foreign country or U.S. possession
$	
8 Cash Liquidation Distribution	PAYER'S Federal identification number
$	[redacted]005
RECIPIENT'S identification number	Account number (see instructions)
[redacted]3905	[redacted]2102

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

Amount Paid By Check/EFT	Amount Reinvested
$ 0	$ 6354.19
Company Paid Fees	Company Paid Service Charges
$ 2.27	$ 0
Discount on Reinvestment	
$ 0	

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

07 1220 15 0809 P0251

UNOFFICIAL

[redacted]2102 SL1 FID XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. If you have DRS shares, the DRS shares will be sold prior to your plan shares. Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

[ ] IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT

Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G.

P4333

00RXHA-R

Unofficial Copy

UNOFFICIAL COPY

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

*******AUTO**SCH 5-DIGIT 77079 000005/0001454 001454

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_RPS.DLTX_PG1.XOM.150943_36082/001454/001454A

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

▶ ACCOUNT SUMMARY

As of close of stock market on 10 Dec 2010

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	3,989.539143	3,989.539143	72.180000	287,954.94

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
12 Nov 2010	10 Dec 2010	0.440000	Common	3,965.163788	1,744.67		1,744.67

Transaction History

From: 01 Jan 2010 To: 10 Dec 2010

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							3,883.713924
10 Mar 2010	Dividend Reinvestment	1,631.16	Comp Paid Fees	0.62	1,631.16	66.120441	24.669527	3,908.383451
10 Jun 2010	Dividend Reinvestment	1,719.69	Comp Paid Fees	0.71	1,719.69	60.621317	28.367744	3,936.751195
10 Sep 2010	Dividend Reinvestment	1,732.17	Comp Paid Fees	0.71	1,732.17	60.964868	28.412593	3,965.163788
10 Dec 2010	Dividend Reinvestment	1,744.67	Comp Paid Fees	0.61	1,744.67	71.575183	24.375355	3,989.539143

IMPORTANT TAX RETURN DOCUMENT ATTACHED
Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX (Rev. 10/11)

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

☐ CORRECTED (if checked)

Dividends and Distributions

1a Total ordinary dividends	1b Qualified dividends
$ 6830.34	$ 6830.34
3 Nondividend distributions	4 Federal income tax withheld
$	$
6 Foreign tax paid	7 Foreign country or U.S. possession
$	
8 Cash Liquidation Distribution	PAYER'S Federal identification number
$	[redacted]9005
RECIPIENT'S identification number	Account number (see instructions)
[redacted]8905	[redacted]2102

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

Amount Paid By Check/EFT	Amount Reinvested
$ 0	$ 6827.69
Company Paid Fees	Company Paid Service Charges
$ 2.65	$ 0
Discount on Reinvestment	
$ 0	

OMB No. 1545-0110

2010

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4334

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

17-20360.425

[redacted]2102 SL1 FID

XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. If you have DRS shares, the DRS shares will be sold prior to your plan shares. Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

■ Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the Plan or DRS sale facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT

Instructions for Recipient

Recipient's Identification Number: For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees: If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

P4335

00RXHA-R (Rev. 6/10)

17-20360.426

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001078

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CS0003.IJSS.L.MIX_3207/001078/001078/6

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

▶ ACCOUNT SUMMARY

As of close of stock market on 24 Mar 2011

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	0.000000	0.000000	82.730000	0.00

Transaction History

From: 24 Mar 2011 To: 24 Mar 2011

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							4,010.200477
24 Mar 2011	Transfer						-1,908.232008	2,101.968469
24 Mar 2011	Transfer						-2,101.968469	0.000000

00TPPA (Rev. 10/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4336

07 0220 15 0808 : 00255 0 1 0 2 3 6 0 5 5

UNOFFICIAL DOCUMENT

[redacted]2102 SL1 FID

XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

Sell this number of shares.

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

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2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- **Please write your holder account number and the company name on your check.**
- **This form should ONLY be used for Exxon Mobil Corporation**
- **The enclosed contribution will ONLY be applied to the account referenced to the right.**

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM

Holder Account Number

[redacted]2102 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4337

00000000XOM SPP1 [redacted]2102

17-20360.428

07-T3201S-08009-I02257

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

********AUTO**ALL FOR AADC 783 000122/0038663 038663

Recipient
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number [redacted]2102 **Co.ID** XOM

Recipient's ID No. [redacted]8905
Payer's Federal ID No. [redacted]0005

*Uncertified accounts are subject to withholding taxes on dividend payments and sales proceeds.

001CS0006_RPS.D_D_PGI.XOM.171720_38852/038663/038663/

Instructions for Recipients

Recipient's Identification Number: For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040 or 1040A), if required. The amount shown may be dividends a corporation paid directly to you as a participant (or beneficiary of a participant) in an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 2a: Shows total capital gain distributions from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13.
But, if no amount is shown in boxes 2c-2d and your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.

Box 2b: Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet - Line 19 in the Schedule D instructions (Form 1040).

Box 2c: Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion and certain empowerment zone business stock that may be subject to a 60% exclusion. See the Schedule D (Form 1040) instructions.

Box 2d: Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet - Line 18 in the instructions for Schedule D (Form 1040).

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5: Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees: If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

[redacted] 188UDR

00RTOA (Rev. 10/11)

EXXON MOBIL CORPORATION

CORRECTED (if checked)

Dividends and Distributions

OMB No. 1545-0110

2011

Form **1099-DIV**

1a Total ordinary dividends $ 1755.92	1b Qualified dividends $ 1755.92
2a Total capital gain distr. $ 0.00	2b Unrecap. Sec. 1250 gain $ 0.00
2c Section 1202 gain $ 0.00	2d Collectibles (28%) gain $ 0.00
3 Nondividend distributions $ 0.00	4 Federal income tax withheld $ 0.00
5 Investment expenses $ 0.00	6 Foreign tax paid $
7 Foreign country or U.S. possession	8 Cash liquidation distributions $ 0.00

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

PAYER'S Federal identification number: [redacted]0005

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S identification number: [redacted]8905
Account number (see instructions): [redacted]2102

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

The reportable amounts above include the following additional income:

Company Paid Fees $ 0.52	Company Paid Service Charges $ 0.00
Discount on Reinvestment $ 0.00	

P4358

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

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ANITA KAY BRUNSTING
203 Bloomingdale Circle
Victoria, Texas 77904
(361) 576-5732

February 16, 2011

ExxonMobil
Computershare
P.O. Box 43078
Providence, RI 02940-3078

Re: Change of Title on Stock Plan Account
Account Name: Brunsting Family Living Trust
Account Number: [redacted]2102

To Whom It May Concern:

Nelva and Elmer Brunsting established a Revocable Living Trust and the above-referenced stock account is in the title of that Living Trust. Elmer Brunsting passed away on April 1, 2009 in Houston, Harris County, Texas. Mrs. Nelva Brunsting, the remaining Founder and Co-Trustee, continued to serve as the Trustee of the Trust. On December 21, 2010, Nelva Brunsting resigned as Trustee of the Living Trust. I, Anita Brunsting, am the current acting as Trustee of the Trust, as evidenced by the enclosed copies of the resignation and acceptance of same. Please transfer the stock shares in the above-referenced account into two new accounts titled as follows (***and close the original account***):

(1) Transfer exactly 1,908.232088 shares to a new account in the following name **(If you cannot transfer fractional shares, round down to the nearest share value)**:

ANITA KAY BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

An acceptable abbreviation for account titling is as follows:

ANITA KAY BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

(Tax I.D. No. of the Elmer H. Brunsting Decedent's Trust is [redacted]3100.)

(2) The **balance of the shares**, including any accrued but unpaid dividends, held in the above-referenced account, should be transferred to a new account in the trust name which appears below. The mailing address should remain as indicated above.

ANITA KAY BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as

P4339

established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

An acceptable abbreviation for account titling is as follows:

ANITA KAY BRUNSTING, Tee of the NELVA E. BRUNSTING SURVIVOR'S TR dtd 4/1/09, as est UTD 10/10/96.

(Tax I.D. No. of the Nelva E. Brunsting Survivor's Trust is [redacted]4685, the social security number of Nelva E. Brunsting.)

Reinvest the future Survivor's Trust dividends. Mail the future Decedent's Trust dividends to me at the above address. Do not take any withholding on the Decedent's Trust dividend distribution.

I have enclosed a copy of an executed and notarized Certificate of Trust verifying the essential terms of the trust document, a copy of the resignation and acceptance documents for the Trust, an original death certificate for Elmer Brunsting, and the necessary transfer forms including a W-9.

If you need additional information or have forms to be completed in order to make this change of title, please contact my attorneys, Susan S. Vacek or Candace L. Kunz-Freed, 14800 St. Mary's Lane, Suite 230, Houston, Texas 77079, (281) 531-5800.

Sincerely,

Anita Kay Brunsting

ANITA KAY BRUNSTING

Enclosures

P4340

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Computershare
PO Box 43078
Providence Rhode Island 02940-3078
www.computershare.com/investor

ELMER H. BRUNSTING OR NELVA
E. BRUNSTING TR BRUNSTING FAM LIVING TR U/A 10/10/96
Name of Current Account Holder
13630 PINEROCK
Address
HOUSTON TX 77079
City, State, Zip

Current Holder Account Number
[redacted] 2102

Company Name
EXXON MOBIL

Transfer Request — See enclosed instructions — PLEASE PRINT CLEARLY

CURRENT HOLDER INFORMATION

Shares to be Transferred
PLEASE NOTE: Whole shares cannot be divided into fractional shares.

1 Daytime Telephone Number: 713-464-4391

2 ☐ **Transfer ALL Shares** (all book-entry shares and any certificated shares submitted)
if this box is checked, do not complete sections 3, 4 and 5.

PARTIAL TRANSFER:

3 **DRS Book-Entry Shares** (number of whole shares to transfer)

4 **Certificated Shares** (number of whole shares to transfer)

IMPORTANT: Original certificate(s) must be submitted for your transfer to be executed.

5 **Investment Plan Book-Entry Shares** (number of whole and/or fractional shares to transfer, if applicable)
1908.232008

All transferred shares will be placed in book-entry form unless otherwise requested in writing.

6 **Authorized Signatures** — This section must be signed and stamped for your transfer to be executed.

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature.

NOTE: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union, that is participating in an approved Medallion Signature Guarantee Program. (A NOTARY SEAL IS NOT ACCEPTABLE)

Required ▶ Medallion Guarantee Stamp
(Notary Seal is Not Acceptable)

GNATURE GUARANTEED
EDALLION GUARANTEED
FIRST VICTORIA
NATIONAL BANK
AUTHORIZED SIGNATURE
A0152439
(10)
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives
Christa Kay Brunsting

Date (mm / dd / yyyy): 03/10/2011

IMPORTANT ▶ You must complete both sides of this form for it to be valid.

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Computershare +

Transfer Request — See enclosed instructions PLEASE PRINT CLEARLY

NEW HOLDER / RECIPIENT INFORMATION • Please complete for each new holder • Use additional pages as necessary

7 Account Type (mark only one box with an "X"):

- ☐ Individual (complete A, B, C, G & H)
- ☐ Custodial with Minor (complete A, B, C, D, G & H)
- ☐ Transfer on Death (complete A, B, C, D, G & H)
- ☐ Joint (complete A, B, C, D, G & H)
- ☐ Estate (complete A, B, C, E, G & H)
- ☑ Trustee/Trust (complete A-H)
- ☐ Other (indicate type and complete A, B, C, D, G & H) _____

A New Holder's Existing Account Number (if applicable)

B *Social Security Number (SSN) or Employer Identification Number (EIN) (do not use hyphens)
[redacted]3100 SSN ☐ EIN ☑ (check one box above)

C Name (First, MI, Last) - Individual / Custodian / Trustee / Executor / Other
ANITA BRUNSTING TRUSTEE OF THE

D Name (First, MI, Last) - Joint Holder / Minor / Co-Trustee / TOD Beneficiary / Other (if applicable)
ELMER H. BRUNSTING DECEDENT'S TRUST

E Trust / Estate Name (if applicable)
DATED 04/01/2009

Trust / Estate Name - *continued*

F Date of Trust (mm / dd / yyyy) (if applicable)
04/01/2009

G Address Number and Street Name / PO Box Apt. / Unit Number
203 BLOOMINGDALE CIRCLE

H City State Zip Code
VICTORIA TX 77904

8 *Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered in section 7B above.

Certification: Under penalties of perjury, I certify that: (1) the number shown on this form is my correct Taxpayer Identification Number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of New Holder Date (mm / dd / yyyy)
Anita Kay Brunsting TRUSTEE 03/10/2011

P4342 +

E4UTR

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AFFIDAVIT OF RESIDENCE

To be completed for decedent transfers only.

Account Name: ELMER BRUNSTING NEVA BRUNSTING TR. Account Number: [redacted] 2102

Name of Stock: EXXON MOBIL

Deceased Holder's Taxpayer Identification or Social Security Number: [redacted] 8905

The undersigned, ANITA K. BRUNSTING, TRUSTEE

residing at 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904

being duly sworn, deposes and says that he/she is TRUSTEE

Describe your status, i.e. Executor, Administrator, Survivor in Joint Tenancy, etc.
(If a corporate fiduciary show title of affiant and name of corporation)

of (the estate of) THE BRUNSTING FAMILY LIVING TR & THE ELMER BRUNSTING DECENTS TR DTD 4/1/2009

who died on 04/01/2009

that at the time of death the domicile (legal residence) of said decedent was at

13030 PINEROCK HOUSTON TX 77079

and that (s)he resided in the State of TEXAS

for 44 years prior to death and was not a resident of any (other) state within the United States of America at time of death.

Signature: Anita Kay Brunsting, trustee

NOTARY PUBLIC STATE OF TEXAS
CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2015

Sworn to before me, a notary public, this AFFIX SEAL

11th day of March, 20 11

Signature: Candace L Kunz-Freed
(official administering oath)

Title: Attorney & Notary

My commission expires 3-27-2015

P4343

EOSAFF 12-04-07

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021320115:08808:P0263

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Computershare
PO Box 43078
Providence Rhode Island 02940-3078
www.computershare.com/investor

ELMER H. BRUNSTING OR NELVA BRUNSTING, TR BRUNSTING FAMILY LIVING TR U/A 10/10/96

Name of Current Account Holder

13630 PINEROCK

Address

HOUSTON TX 77079

City, State, Zip

Current Holder Account Number

[redacted]2102

Company Name

EXXON MOBIL

Transfer Request — See enclosed instructions PLEASE PRINT CLEARLY

CURRENT HOLDER INFORMATION

Shares to be Transferred

PLEASE NOTE: Whole shares cannot be divided into fractional shares.

1 Daytime Telephone Number: 713-464-4391

2 [✓] **Transfer ALL Shares** (all book-entry shares and any certificated shares submitted)
If this box is checked, do not complete sections 3, 4 and 5.

PARTIAL TRANSFER: Balance of Shares

3 **DRS Book-Entry Shares** (number of whole shares to transfer)

4 **Certificated Shares** (number of whole shares to transfer)

IMPORTANT: Original certificate(s) must be submitted for your transfer to be executed.

5 **Investment Plan Book-Entry Shares** (number of whole and/or fractional shares to transfer, if applicable)

All transferred shares will be placed in book-entry form unless otherwise instructed in writing. CERTIFIED

6 **Authorized Signatures** — This section must be signed and stamped for your transfer to be executed.

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature.

NOTE: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union, that is participating in an approved Medallion Signature Guarantee Program. (A NOTARY SEAL IS NOT ACCEPTABLE)

Required ▶ Medallion Guarantee Stamp
(Notary Seal Is Not Acceptable)

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
FIRST VICTORIA
NATIONAL BANK
AUTHORIZED SIGNATURE
(10) A0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives

Date (mm / dd / yyyy): 03/10/2011

IMPORTANT ▶ You must complete both sides of this form for it to be valid.

P4344 +

E2UTR

Computershare +

Transfer Request — See enclosed instructions

PLEASE PRINT CLEARLY

NEW HOLDER / RECIPIENT INFORMATION

• Please complete for each new holder • Use additional pages as necessary

7 Account Type (mark only one box with an "X"):

- ☐ Individual (complete A, B, C, G & H)
- ☐ Custodial with Minor (complete A, B, C, D, G & H)
- ☐ Transfer on Death (complete A, B, C, D, G & H)
- ☐ Joint (complete A, B, C, D, G & H)
- ☐ Estate (complete A, B, C, E, G & H)
- ☑ Trustee/Trust (complete A-H)
- ☐ Other (indicate type and complete A, B, C, D, G & H) _____

A New Holder's Existing Account Number (if applicable)

B *Social Security Number (SSN) or Employer Identification Number (EIN) (do not use hyphens)
[redacted]4685 SSN ☑ EIN ☐ (check one box above)

C Name (First, MI, Last) - Individual / Custodian / Trustee / Executor / Other
ANITA BRUNSTING TRUSTEE OF THE

D Name (First, MI, Last) - Joint Holder / Minor / Co-Trustee / TOD Beneficiary / Other (if applicable)
NELVA BRUNSTING SURVIVOR'S

E Trust / Estate Name (if applicable)
TRUST

Trust / Estate Name - *continued*

F Date of Trust (mm / dd / yyyy) (if applicable)
04 / 01 / 2009

G Address Number and Street Name / PO Box — Apt. / Unit Number
203 BLOOMINGDALE CIRCLE

H City — State — Zip Code
VICTORIA — TX — 77904

8 *Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered in section 7B above.

Certification: Under penalties of perjury, I certify that: (1) the number shown on this form is my correct Taxpayer Identification Number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of New Holder — Date (mm / dd / yyyy)
Anita Kay Brunsting TRUSTEE — 03 / 10 / 2011

P4345 +

E4UTR

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AFFIDAVIT OF RESIDENCE

To be completed for decedent transfers only.

Account Name: ELMER BRUNSTING OR NELVA BRUNSTING TR Account Number: [redacted] 2102

Name of Stock: EXXON MOBIL

Deceased Holder's Taxpayer Identification or Social Security Number: [redacted] 8905

The undersigned, ANITA BRUNSTING, TRUSTEE

residing at 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904

being duly sworn, deposes and says that he/she is TRUSTEE

Describe your status, i.e. Executor, Administrator, Survivor in Joint Tenancy, etc.
(If a corporate fiduciary show title of affiant and name of corporation)

of (the estate of) THE BRUNSTING FAMILY LIVING TR DTD 10/10/96 & ELMER BRUNSTING

who died on 10/01/2009

that at the time of death the domicile (legal residence) of said decedent was at

13630 PINEROCK HOUSTON TX 77079

and that (s)he resided in the State of TEXAS

for 44 years prior to death and was not a resident of any (other) state within the United States of America at time of death.

Signature: Anita Kay Brunsting, trustee

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2015
SEAL

Sworn to before me, a notary public, this

11th day of March 20 11

Signature: Candace D Kunz-Freed
(official administering oath)

Title: Attorney & Notary

My commission expires 3-27-2015

P4346

00TH4A

EOSAFF 12-04-07

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STATE OF TEXAS

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES
VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
APR 28 2009
STATE OF TEXAS — CERTIFICATE OF DEATH — STATE FILE NUMBER 142-09-043770

1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last): ELMER H. BRUNSTING
(Maiden):
2. DATE OF DEATH (ACTUAL OR PRESUMED): 04/01/2009
3. SEX: MALE
4. DATE OF BIRTH: 09/29/1921
5. AGE (Last Birthday) (Years): 87
If UNDER 1 YR. (Mo / Days) / If UNDER 1 DAY (Hours / Min):
6. BIRTHPLACE (City & State or Foreign Country): HULL, IA
7. SOCIAL SECURITY NUMBER: [redacted]8905
8. MARITAL STATUS AT TIME OF DEATH: ☒ Married ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage): NELVA RENSINK
10a. RESIDENCE STREET ADDRESS: 13630 PINEROCK
10b. APT. NO.:
10c. CITY OR TOWN: HOUSTON
10d. COUNTY: HARRIS
10e. STATE: TEXAS
10f. ZIP CODE: 77079
10g. INSIDE CITY LIMITS? ☒ Yes ☐ No
11. FATHER'S NAME: LUKE BRUNSTING
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE: GERTUDE RIKKERS
13. PLACE OF DEATH (CHECK ONLY ONE)
IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice Facility ☐ Nursing Home ☒ Decedent's Home ☐ Other (Specify)
14. COUNTY OF DEATH: HARRIS
15. CITY/TOWN, ZIP (IF OUTSIDE CITY LIMIT & GIVE PRECINCT NO.): HOUSTON, 77079
16. FACILITY NAME (If not institution, give street address): 13630 PINEROCK
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED: NELVA BRUNSTING - WIFE
18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code): 13630 PINEROCK, HOUSTON, TX 77079
19. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH: MARICELLA JIRON ,BY ELECTRONIC SIGNATURE - 113462
21. ☐ Unknown — Section: 214-D; Block:; Lot: OD LC; Space: 64-F
22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place): MEMORIAL OAKS CEMETERY
23. LOCATION (City/Town, and State): HOUSTON, TX
24. NAME OF FUNERAL FACILITY: MEMORIAL OAKS FUNERAL HOME
25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code): 13001 KATY FREEWAY, HOUSTON, TX 77079
26. CERTIFIER (Check only one)
☒ Certifying physician - To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.
27. SIGNATURE OF CERTIFIER: CYNTHIA ZINNER , BY ELECTRONIC SIGNATURE
28. DATE CERTIFIED (Mo/Day/Yr): 04/10/2009
29. LICENSE NUMBER: M2509
30. TIME OF DEATH (Actual or presumed): 09:30 AM
31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code): CYNTHIA ZINNER 1880 SOUTH DAIRY ASHFORD STE # 330, HOUSTON, TX 77077
32. TITLE OF CERTIFIER: MD

CAUSE OF DEATH
33. PART I. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH.
Approximate Interval Onset to death
IMMEDIATE CAUSE (Final disease or condition resulting in death): a. DEMENTIA, LIKELY VASCULAR TYPE — 3 YEARS
Due to (or as a consequence of):
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST
b. Due to (or as a consequence of):
c. Due to (or as a consequence of):
d.
PART 2. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I.: CHRONIC LYMPHOCYTIC LEUKEMIA, CORONARY ARTERY DISEASE, REMOTE PROSTATE CANCER, HYPERLIPIDEMIA
34. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
36. MANNER OF DEATH: ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined
37. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☒ No ☐ Probably ☐ Unknown
38. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
39. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)
40a. DATE OF INJURY (Mo/Day/Yr):
40b. TIME OF INJURY:
40c. INJURY AT WORK? ☐ Yes ☐ No
40d. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area):
40e. LOCATION (Street and Number, City, State, Zip Code):
40f. COUNTY OF INJURY:
41. DESCRIBE HOW INJURY OCCURRED:
42a. REGISTRAR FILE NO.: 0206214
42b. DATE RECEIVED BY LOCAL REGISTRAR: 04/28/2009
42c. REGISTRAR: REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED

EDR NUMBER 000000544490

This is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 191.051, Health and Safety Code.

ISSUED
APR 28 2009

Geraldine R. Harris
GERALDINE R. HARRIS
STATE REGISTRAR

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

Seal

AMI

P4347

M0052447

VS-112 REV 1/2006

17-20360.438

07-20360.439 - 00001 - 00057

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
ANITA KAY BRUNSTING, Trustee, of the ELMER H. BRUNSTING DECEDENT'S TRUST

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☑ Other (see instructions) ▶ Irrevocable Trust

☐ Exempt payee

Address (number, street, and apt. or suite no.)
203 Bloomingdale Circle

Requester's name and address (optional)

City, state, and ZIP code
Victoria, Texas 77904

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
: :

or

Employer identification number
[redacted]3100

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here — Signature of U.S. person Anita Kay Brunsting — Date ▶ 3/10/11

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

17-20360.439

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
ANITA KAY BRUNSTING, Trustee, of the NELVA E. BRUNSTING SURVIVOR'S TRUST

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☑ Other (see instructions) ▶ Revocable Trust

☐ Exempt payee

Address (number, street, and apt. or suite no.)
203 Bloomingdale Circle

Requester's name and address (optional)

City, state, and ZIP code
Victoria, Texas 77904

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
[redacted] 4685

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ Anita Kay Brunsting Date ▶ 3/11/11

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

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Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

07-12-2010 5:00:39 PM CDT
Copy
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2010215048 - 00250

RESIGNATION OF ORIGINAL TRUSTEE

Pursuant to Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended (the "Trust"), I, NELVA E. BRUNSTING, an original Trustee of the Trust may resign as Trustee.

On April 1, 2009, two subtrusts were created under the BRUNSTING FAMILY LIVING TRUST and are known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

I hereby resign as Trustee of these said Trusts in accordance with the provisions contained in Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

My resignation is effective immediately and I hereby appoint ANITA KAY BRUNSTING as the Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as well as the subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

Nelva E. Brunsting
NELVA E. BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:35 pm p.m., by NELVA E. BRUNSTING.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed
Notary Public, State of Texas

P4350

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ACCEPTANCE BY SUCCESSOR TRUSTEE

I, ANITA KAY BRUNSTING, hereby acknowledge my acceptance this day of the office and duties of Successor Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST, after the resignation of the original Trustee, NELVA E. BRUNSTING.

Anita Kay Brunsting
ANITA KAY BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:36pm p.m., by ANITA KAY BRUNSTING.

Candace S Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

P4351

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27.1220.15.0800.820627.1

CERTIFICATE OF TRUST
FOR THE
ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned successor Trustee hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009, without having changed his appointment of successor Trustee. Therefore, pursuant to Article IV, Section B, of the BRUNSTING FAMILY LIVING TRUST, the remaining original Trustee continues to serve alone.

3. The full legal name of the said trust was:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

4. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**.

5. NELVA E. BRUNSTING resigned as Trustee on December 21, 2010, after having changed her successor Trustee by that certain Appointment of Successor Trustee dated December 21, 2010. Therefore, the first successor Trustee, ANITA KAY BRUNSTING, shall serve as Trustee.

For purposes of asset allocation, transfer of property into the decedent's trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the decedent's trust shall now be known as:

ANITA KAY BRUNSTING, Trustee, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as

established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is [redacted]3100.

6. If ANITA KAY BRUNSTING fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Trustees in the following order:

First, AMY RUTH TSCHIRHART
Second, THE FROST NATIONAL BANK

7. Upon the death or disability of NELVA E. BRUNSTING, then the following individuals will serve as Successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

8. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

9. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

10. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustee and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on December 21, 2010.

P4353

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2011027615 Page 5 of 6

ANITA KAY BRUNSTING,
Successor Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on December 21, 2010 at 1:45 p.m., by ANITA KAY BRUNSTING, as successor Trustee.

Witness my hand and official seal.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

UNOFFICIAL COPY

02-28-2013 12:03:08 Page 2 of 3

CERTIFICATE OF TRUST
FOR THE
NELVA E. BRUNSTING **SURVIVOR'S TRUST**

The undersigned successor Trustee hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009, without having changed his appointment of successor Trustee. Therefore, pursuant to Article IV, Section B, of the BRUNSTING FAMILY LIVING TRUST, the remaining original Trustee continues to serve alone.

3. The full legal name of the said trust was:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

4. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent revocable trust known as the NELVA E. BRUNSTING **SURVIVOR'S TRUST**.

5. NELVA E. BRUNSTING resigned as Trustee on December 21, 2010, after having changed her successor Trustee by that certain Appointment of Successor Trustee dated December 21, 2010. Therefore, the first successor Trustee, ANITA KAY BRUNSTING, shall serve as Trustee.

For purposes of asset allocation, transfer of property into the survivor's trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the survivor's trust shall now be known as:

ANITA KAY BRUNSTING, Trustee, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as

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established under the BRUNSTING FAMILY LIVING TRUST
dated October 10, 1996, as amended.

The tax identification number of the NELVA E. BRUNSTING **SURVIVOR'S TRUST** is [redacted]4685.

6. If ANITA KAY BRUNSTING fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Trustees in the following order:

First, AMY RUTH TSCHIRHART
Second, THE FROST NATIONAL BANK

7. Upon the death or disability of NELVA E. BRUNSTING, then the following individuals will serve as Successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

8. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

9. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

10. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustee and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on December 21, 2010.

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

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005791

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

07 320 5 2809 : 2809 : 2 0 2 7 6

CHANGE OF ADDRESS NOTICE

25 Mar 2011

Dear Holder:
Re: Company Name: Exxon Mobil Corporation
Account Number: C******2102
Registration: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM LIVING TRUST UA 10/10/96

Thank you for your recent request to update the address on the above referenced account.
Our records now reflect the following **new address** for this account:
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Our records indicate your **previous address** was:
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

If this ***new address is correct***, no further action is required.
If this ***new address is incorrect***, please call us promptly at the number indicated above.

We are committed to providing you the best service our industry can offer, and appreciate the opportunity to be of service to you.

Sincerely,
Computershare

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
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Providence, RI 02940-3078
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Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

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ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7769

SSN/TIN Certified: Yes
Symbol: XOM

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Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7769

▶ ACCOUNT SUMMARY

As of close of stock market on 24 Mar 2011

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	1,908.000000	0.232008	1,908.232008	82.730000	157,868.03

Transaction History

From: 24 Mar 2011 To: 24 Mar 2011

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							0.000000
24 Mar 2011	Transfer						1,908.232008	1,908.232008
24 Mar 2011	Certificate Issuance						-1,908.000000	0.232008

00TPPA (Rev. 10/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

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X O M
2 1 4 U D R

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

Sell this number of shares.

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

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2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING

Holder Account Number

[redacted]7769 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

007926

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7769

Company ID XOM
SSN/TIN Certified Yes

Exxon Mobil Corporation - Direct Registration (DRS) Advice

Transaction(s)

Date	Transaction Description	Total Shares/Units	CUSIP	Class Description
24 Mar 2011	Plan Certification	1,908.000000	30231G102	Common Stock

Account Information: Date: 24 Mar 2011 (Excludes transactions pending settlement)

Current Dividend Reinvestment Balance	Current Direct Registration Balance	Total Shares/ Units	Price Per Share	Value ($)	CUSIP	Class Description
0.232008	1,908.000000	1,908.232008	82.730000	157,868.03	30231G102	Common Stock

IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required.

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

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Please see important PRIVACY NOTICE on reverse side of statement

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Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

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PO Box 43078
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000352

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7769

Company ID XOM
SSN/TIN Certified Yes

Exxon Mobil Corporation - Direct Registration (DRS) Advice

Transaction(s)

Date	Transaction Description	Total Shares/Units	CUSIP	Class Description
15 Jun 2011	Transfer	-1,325.000000	30231G102	Common Stock

Account Information: Date: 15 Jun 2011 (Excludes transactions pending settlement)

Current Dividend Reinvestment Balance	Current Direct Registration Balance	Total Shares/Units	CUSIP	Class Description
0.000000	583.000000	583.000000	30231G102	Common Stock

IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required.

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

P4362

40UDR XOM

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Please see important PRIVACY NOTICE on reverse side of statement

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Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

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Providence, RI 02940-3078
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Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

07 1320 15 : 0809 : P0283

031438

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7769

SSN/TIN Certified: Yes
Symbol: XOM

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Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7769

▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	583.000000	4.204777	587.204777	80.270000	47,134.93

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
14 May 2012	11 Jun 2012	0.570000	Common	583.000000	332.31		332.31

Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							0.000000
11 Jun 2012	Dividend Reinvestment	332.31	Comp Paid Fees	0.11	332.31	79.031547	4.204777	4.204777

00TPPA (Rev. 12/11)

How to Read Your Statement (Please see reverse side for important information)

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]7769 SL1 FID

XOM
214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Program

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the enrollment brochure for additional details on the terms and conditions of transactions under the plan or DRS statement)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use **section 1A** above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use **section 1B** above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use **section 1C** above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign **section 1D** for the above instruction(s) to be completed. **Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement.* A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use **section 2** below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. *Please note the purchase limitations identified on the bottom left of the form.*

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. *We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties.* This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

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2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day (*"trading day"*), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING

Holder Account Number

[redacted]7769 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4365

0000000000XOM SPP1 [redacted]7769

Screen dump for user: vigorito

Date: Thursday, 5th July 2012 17:53:29

07/23/2012 15:08:03 PDT 2085

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COMPUTERSHARE SHAREHOLDER SERVICES INC                    Run/Sess/Date:1527/0000/07-05-2012
EXXON MOBIL CORPORATION/XOM                                 Serv Provider/Code: CIS/REGEQ
* SCRIP Enquiry - PAYMENTS-------------------------------------------------------------Page   1
 HID: [redacted]7769  Type:  FID   TIN: *******3100    Key....: BRUNSTING   ANITA              *PI*
 N&A: ANITA BRUNSTING TR | UA 04/01/09 | ELMER H BRUNSTING DECEDENT'S TRUST, ...   Post: 77904

-#--Date------Meth------Reference-----Net Amt-----Status-----------Bse-Pd---Acct---Pay Type---

01  06/11/12  Riv       20977305         332.31  Pres    06/11/12  USD USD  D1206  Dividend
02  03/09/12  Dir       00039188         274.01  Pres    03/09/12  USD USD  D1203  Dividend
03  12/09/11  Dir       00039770         274.01  Pres    12/09/11  USD USD  D1112  Dividend
04  09/09/11  Dir       00039892         274.01  Pres    09/09/11  USD USD  D1109  Dividend
05  06/10/11  Dir       00039733         896.76  Pres    06/10/11  USD USD  D1106  Dividend
06  03/29/11  Che       00121887           4.18  Pres    06/10/11  USD USD  SLE02  Trading

*-------------------------------------------------------------------------------------------
  Action.....: 01___        Locate....: _____________________________
<Esc> for valid actions; ">" , "<" , "+" ,"$" for extra, ,Dnn, Tnn, Pnn, Fnn
Form: ENSDIS01  Slot: 4835  PID: 584D4247  Node: CSAPR4  Date: 05Jul2012 17:53
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07152015:08009:P02286

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

000658

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Account Number: [redacted]769

Dear Holder:

We have received and processed your request to add bank payment instructions to your account. We are in the process of verifying the bank payment instructions with your financial institution. The new payment instructions should become effective within 15 days. All disbursements made by the company will then be directly paid to your bank account. You will also be able to direct us to use this bank account to receive payments at your discretion if you choose to sell your shares.

Company Name: Exxon Mobil Corporation

Bank Name: BANK OF AMERICA N A

Bank Account (Last four Digits): 1143

Please note, if the bank payment instructions are determined to be incorrect in the verification process, you will receive a notice that your request has been cancelled.

If you are a participant in a reinvestment plan, your reinvestment plan participation option will be honored in lieu of the above payment instructions. For example, if you have enrolled in full reinvestment, all dividends will be reinvested rather than paid to the above bank account. If you have enrolled in the cash payment option, all dividends will be paid in cash using the new bank payment instructions.

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

005814

Recipient
ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number [redacted]7769 **Co.ID** XOM

Recipient's ID No. 27-6453100
Payer's Federal ID No. 13-5409005

001CS0006_RPS.EMTX.XOM.171720_38852/005814/005814/

*Uncertified accounts are subject to withholding taxes on dividend payments and sales proceeds.

Instructions for Recipients

Recipient's Identification Number: For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040 or 1040A), if required. The amount shown may be dividends a corporation paid directly to you as a participant (or beneficiary of a participant) in an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 2a: Shows total capital gain distributions from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13.
But, if no amount is shown in boxes 2c-2d and your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.

Box 2b: Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet - Line 19 in the Schedule D instructions (Form 1040).

Box 2c: Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion and certain empowerment zone business stock that may be subject to a 60% exclusion. See the Schedule D (Form 1040) instructions.

Box 2d: Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet - Line 18 in the instructions for Schedule D (Form 1040).

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5: Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees: If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

[redacted] 188UDR

00RTQA (Rev. 10/11)

EXXON MOBIL CORPORATION

☐ CORRECTED (if checked)

Dividends and Distributions

OMB No. 1545-0110

2011

Form **1099-DIV**

1a Total ordinary dividends $ 1444.78	1b Qualified dividends $ 1444.78
2a Total capital gain distr. $ 0.00	2b Unrecap. Sec. 1250 gain $ 0.00
2c Section 1202 gain $ 0.00	2d Collectibles (28%) gain $ 0.00
3 Nondividend distributions $ 0.00	4 Federal income tax withheld $ 0.00
5 Investment expenses $ 0.00	6 Foreign tax paid $
7 Foreign country or U.S. possession	8 Cash liquidation distributions $ 0.00

PAYER'S Federal identification number: [redacted]9005
PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S identification number: [redacted]3100
Account number (see instructions): [redacted]7769
RECIPIENT'S name, street address, city, state, ZIP code
ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

The reportable amounts above include the following additional income:

Company Paid Fees $ 0.00	Company Paid Service Charges $ 0.00
Discount on Reinvestment $ 0.00	

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it that it has not been reported.

P4368

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

EXHIBIT 9 - 000009

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

[redacted]7769 ETRD1 XOM

Transfer Request

Current Account Information

Company Name	EXXON MOBIL CORPORATION	Holding	COMMON STOCK		
Holder Name	ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING DECEDENT'S TRUST	Account Number	[redacted]7769		
Address	203 BLOOMINGDALE CIRCLE VICTORIA TX 77904	Reason For Transfer	GeneralTransfer	Type of Transfer	PartialTransfer

Shares to Transfer

Book	1325		
Plan			
Certificate (s)		Note: You must send in original certificate(s) with enough shares to satisfy the transfer amount.	
Total	1325		

Current Account Holder Signature(s)

Authorized Signatures	This section must be signed and stamped for your transfer to be executed.	Required > Medallion Guarantee Stamp (Notary Seal is Not Acceptable)

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatsoever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature

Note: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union that is participating in an approved Medallion Signature Guarantee program.

(A NOTARY SEAL IS NOT ACCEPTABLE)

SIGNATURE GUARANTEED
MEDALLION GUARANTEE
FIRST VICTORIA NATIONAL BANK
(15)
AUTHORIZED SIGNATURE
D0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives	Date (mm/dd/yyyy)
Anita Brunsting	06/07/2011

Medallion

P4369 3/3

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07-22215-scc Doc 1-2 Pg 2 of 3

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

Account Type	Individual	Shares to Transfer	1325		
	Holder	SSN/EIN	[redacted]-6228		
First Name	Carole	Middle Initial	A		
Last Name	Brunsting				
Street Address	5822 Jason				
City	Houston	State	TX	Zip	77074

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of Holder	Date (mm/dd/yyyy)
	06/08/2011

P4870

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

000876

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Account Number: [redacted]7769

Dear Holder:

We have received and processed your request to enroll your account in the dividend reinvestment plan for Exxon Mobil Corporation.

In response to your request, your account has been enrolled with the following option: Full Dividend Reinvestment.

This change was made on 03 Mar 2012.

Please note, if your enrollment was received after the record date of any upcoming dividend, it will not be in effect for that dividend.

If you did not request this enrollment, please contact us at the number above during regular business hours.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

This notice is provided on behalf of Computershare Trust Company, N.A.

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001183

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0003.DSS.I. MIX_3207/001183/00118356

07-20360-0463-0008-0020

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

▶ ACCOUNT SUMMARY

As of close of stock market on 24 Mar 2011

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	2,101.968469	2,101.968469	82.730000	173,895.85

Transaction History

From: 24 Mar 2011 To: 24 Mar 2011

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							0.000000
24 Mar 2011	Transfer						2,101.968469	2,101.968469

00TPPA (Rev. 10/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4372

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[redacted]7777 SL1 FID XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 1/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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DO NOT COPY

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

000051

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0003.EML.L.MIX_3259000051\000051\6

07 220 5 080503 0202

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

▶ ACCOUNT SUMMARY

As of close of stock market on 11 May 2011

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	981.968469	981.968469	81.120000	79,657.28

Transaction History

From: 11 May 2011 To: 11 May 2011

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							2,101.968469
11 May 2011	Transfer						-1,120.000000	981.968469

00TPPA (Rev. 10/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4374

UNOFFICIAL COPY

[redacted]7777 SL1 FID

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1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 1/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- **Please write your holder account number and the company name on your check.**
- **This form should ONLY be used for Exxon Mobil Corporation**
- **The enclosed contribution will ONLY be applied to the account referenced to the right.**

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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00000000XOM SPP1 [redacted]7777

Not Official Form

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

024050

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_RPS.EML.TX.XOM.172021_38851/024050/029879

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

▶ ACCOUNT SUMMARY

As of close of stock market on 09 Dec 2011

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	675.910671	675.910671	81.340000	54,978.57

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
10 Nov 2011	09 Dec 2011	0.470000	Common	671.987460	315.83		315.83

Transaction History

From: 01 Jan 2011 To: 09 Dec 2011

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							0.000000
24 Mar 2011	Transfer						2,101.968469	2,101.968469
11 May 2011	Transfer						-1,120.000000	981.968469
10 Jun 2011	Dividend Reinvestment	461.53	Comp Paid Fees	0.14	461.53	81.010632	5.697153	987.665622
15 Jun 2011	Transfer						-160.000000	827.665622
15 Jun 2011	Transfer						-160.000000	667.665622

IMPORTANT TAX RETURN DOCUMENT ATTACHED

00TPPA-TAX (Rev. 10/11)

Please see Important PRIVACY NOTICE on reverse side of statement

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Form 1099-DIV (keep for your records)

☐ CORRECTED (if checked)

Dividends and Distributions

1a Total ordinary dividends	1b Qualified dividends
$ 1091.51	$ 1091.51
3 Nondividend distributions	4 Federal income tax withheld
$	$
6 Foreign tax paid	7 Foreign country or U.S. possession
$	
8 Cash Liquidation Distribution	PAYER'S Federal identification number
$	[redacted]005
RECIPIENT'S identification number	Account number (see instructions)
[redacted]4685	[redacted]7777

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

Amount Paid By Check/EFT	Amount Reinvested
$ 0	$ 1091.16
Company Paid Fees	Company Paid Service Charges
$ 0.35	$ 0
Discount on Reinvestment	
$ 0	

Department of the Treasury - Internal Revenue Service

OMB No. 1545-0110

2011

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4376

07132015:08006:P02955

NOT FOR DISTRIBUTION

[redacted]7777 SL1 FID

XOM
214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the Plan or DRS (as applicable))

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

Instructions for Recipient

Recipient's Identification Number: For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040 or 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees: If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

P4377

00RXHA-R (Rev. 10/11)

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_RPS.EML.TX.XOM.172021_3851/024050/029880/4

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

Transaction History (cont.)

From: 01 Jan 2011 To: 09 Dec 2011

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
09 Sep 2011	Dividend Reinvestment	313.80	Comp Paid Fees	0.11	313.80	72.608004	4.321838	671.987460
09 Dec 2011	Dividend Reinvestment	315.83	Comp Paid Fees	0.10	315.83	80.502937	3.923211	675.910671

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00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

P4378

[redacted]7777 SL1 FID XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use **section 1A** above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use **section 1B** above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use **section 1C** above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign **section 1D** for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

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CLIENT COPY

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

031683

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_rpt.EmL.XOM.080806_39590/031683031695A

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

▶ ACCOUNT SUMMARY

As of close of stock market on 09 Mar 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	679.609732	679.609732	84.300000	57,291.10

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
10 Feb 2012	09 Mar 2012	0.470000	Common	675.910671	317.68		317.68

Transaction History

From: 01 Jan 2012 To: 09 Mar 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							675.910671
09 Mar 2012	Dividend Reinvestment	317.68	Comp Paid Fees	0.09	317.68	85.881244	3.699061	679.609732

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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UNOFFICIAL DOCUMENT

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XOM
214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS rules, as any)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!
The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4381

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XOM SPECIMEN

07-3201-5:0809:P0301

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

031439

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_rpt.Ent1.XOM.105024_4023/031439/032117/6

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	684.511319	684.511319	80.270000	54,945.72

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
14 May 2012	11 Jun 2012	0.570000	Common	679.609732	387.38		387.38

Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							675.910671
09 Mar 2012	Dividend Reinvestment	317.68	Comp Paid Fees	0.09	317.68	85.881244	3.699061	679.609732
11 Jun 2012	Dividend Reinvestment	387.38	Comp Paid Fees	0.12	387.38	79.031547	4.901587	684.511319

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information.

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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XOM
214UDR

1 Transaction Request Form

SL1 FID

Please check or complete all applicable sections.

1A Sell Shares

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT:
You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS as applicable)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!
The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-4AOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4383

0000000000XOM SPP1 [redacted]7777

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

000659

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Account Number: [redacted]7777

Dear Holder:

We have received and processed your request to add bank payment instructions to your account. We are in the process of verifying the bank payment instructions with your financial institution. The new payment instructions should become effective within 15 days. All disbursements made by the company will then be directly paid to your bank account. You will also be able to direct us to use this bank account to receive payments at your discretion if you choose to sell your shares.

Company Name: Exxon Mobil Corporation

Bank Name: BANK OF AMERICA N A

Bank Account (Last four Digits): 1143

Please note, if the bank payment instructions are determined to be incorrect in the verification process, you will receive a notice that your request has been cancelled.

If you are a participant in a reinvestment plan, your reinvestment plan participation option will be honored in lieu of the above payment instructions. For example, if you have enrolled in full reinvestment, all dividends will be reinvested rather than paid to the above bank account. If you have enrolled in the cash payment option, all dividends will be paid in cash using the new bank payment instructions.

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Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

[redacted]7777 ETRD1 XOM

Transfer Request

Current Account Information

Company Name	EXXON MOBIL CORPORATION	Holding	COMMON STOCK		
Holder Name	ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST	Account Number	[redacted]7777		
Address	203 BLOOMINGDALE CIRCLE VICTORIA TX 77904	Reason For Transfer	GeneralTransfer	Type of Transfer	PartialTransfer

Shares to Transfer

Book			
Plan	1120		
Certificate (s)		Note: You must send in original certificate(s) with enough shares to satisfy the transfer amount.	
Total	1120		

Current Account Holder Signature(s)

Authorized Signatures	This section must be signed and stamped for your transfer to be executed.	Required > Medallion Guarantee Stamp (Notary Seal is Not Acceptable)

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatsoever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature

Note: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union that is participating in an approved Medallion Signature Guarantee program.

(A NOTARY SEAL IS NOT ACCEPTABLE)

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
FIRST VICTORIA NATIONAL BANK
AUTHORIZED SIGNATURE
(15)
D0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives	Date (mm/dd/yyyy)
Anita Brunsting	04/25/2011

VERIFIED

P4385

17-20360.476

C21-0220615-080505 · 080505

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

Account Type	Individual	Shares to Transfer			1120
	Holder	SSN/EIN	[redacted]5947		
First Name	Amy	Middle Initial	R		
Last Name	Brunsting				
Street Address	2582 Country Ledge Dr.				
City	New Braunfels	State	TX	Zip	78132-4109

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification Number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of Holder	Date (mm/dd/yyyy)
Amy R. Brunsting	04/25/2011

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE. IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

Signature of New Holder/Recipient	Date (mm/dd/yyyy)
Amy R. Brunsting	05/02/2011

P4386

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Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

[redacted]7777 ETRD1 XOM

Transfer Request

Current Account Information

Company Name	EXXON MOBIL CORPORATION	Holding	COMMON STOCK		
Holder Name	ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST	Account Number	[redacted]7777		
Address	203 BLOOMINGDALE CIRCLE VICTORIA TX 77904	Reason For Transfer	GeneralTransfer	Type of Transfer	PartialTransfer

Shares to Transfer

Book		
Plan	320	
Certificate (s)		Note: You must send in original certificate(s) with enough shares to satisfy the transfer amount.
Total	320	

Current Account Holder Signature(s)

Authorized Signatures	This section must be signed and stamped for your transfer to be executed.	Required > Medallion Guarantee Stamp (Notary Seal is Not Acceptable)

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatsoever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature

Note: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union that is participating in an approved Medallion Signature Guarantee program.

(A NOTARY SEAL IS NOT ACCEPTABLE)

[redacted] SIGNATURE GUARANTEED
MEDALLION GUARANTEE
FIRST VICTORIA NATIONAL BANK
AUTHORIZED SIGNATURE
D0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives	Date (mm/dd/yyyy)
Anita Brunsting	06/07/2011

[redacted]

P4387 of 5

07-13-2011 E-DELIVERY

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07-12201-cgc-Doc#17

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

Account Type	Individual	Shares to Transfer			160
	Holder	SSN/EIN	[redacted]		1860
First Name	Anita	Middle Initial			
Last Name	Brunsting				
Street Address	203 Bloomingdale Circle				
City	Victoria	State	TX	Zip	77904

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of Holder	Date (mm/dd/yyyy)
Anita Brunsting	06/07/2011

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this fom. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE. IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

Signature of New Holder/Recipient	Date (mm/dd/yyyy)
Anita Brunsting	06/07/2011

Account 2

Account Type	Individual	Shares to Transfer			160
	Holder	SSN/EIN	[redacted]		6240
First Name	Candace	Middle Initial			
Last Name	Curtis				
Street Address	1215 Ulfinian Way				
City	Martinez	State	CA	Zip	94553

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of Holder	Date (mm/dd/yyyy)
Candace Curtis	06/08/2011

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this fom. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE. IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

Signature of New Holder/Recipient	Date (mm/dd/yyyy)
Candace Curtis	06/08/2011

P4388

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

********AUTO**SCH 3-DIGIT 945 000481/0189855 189855

CANDACE CURTIS
1215 ULFINIAN WAY
MARTINEZ CA 94553

Holder Account Number
[redacted]6387

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_rpt.DL_PO1.XOM.105024_40233/189855/189855/6

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]6387

▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	24.981004	24.981004	80.270000	2,005.23

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
14 May 2012	11 Jun 2012	0.570000	Common	24.802088	14.14		14.14

Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							86.667134
10 Jan 2012	Sale	3,662.35	Transaction Fee	65.40	3,796.95	85.830000	-45.000000	41.667134
24 Jan 2012	Sale	1,478.15	Transaction Fee	62.04	1,416.11	86.950000	-17.000000	24.667134
09 Mar 2012	Dividend Reinvestment	11.59			11.59	85.881244	0.134954	24.802088
11 Jun 2012	Dividend Reinvestment	14.14			14.14	79.031547	0.178916	24.981004

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]6387 SL1 IND XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details of the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: CANDACE CURTIS

Holder Account Number

[redacted]6387 IND

Computershare
P.O. Box 6006
Carol Streams, IL 60197-6006

P4390

00000000XOM SPP1 [redacted]6387

CONFIDENTIAL

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

**********AUTO**3-DIGIT 781 000272/0105978 105978

AMY R BRUNSTING
2582 COUNTRY LEDGE DR
NEW BRAUNFELS TX 78132-4109

Holder Account Number
[redacted]9041

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_rps.DI._PG1.XOM.105024_40233/105978/105978/6

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]9041

▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	104.058674	104.058674	80.270000	8,352.79

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
14 May 2012	11 Jun 2012	0.570000	Common	103.313529	58.89		58.89

Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							102.751241
09 Mar 2012	Dividend Reinvestment	48.29	Comp Paid Fees	0.01	48.29	85.881244	0.562288	103.313529
11 Jun 2012	Dividend Reinvestment	58.89	Comp Paid Fees	0.02	58.89	79.031547	0.745145	104.058674

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

P4391

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[redacted]9041 SL1 IND

XOM 214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the particular sale facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!
The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use **section 1A** above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use **section 1B** above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use **section 1C** above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign **section 1D** for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use **section 2** below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: AMY R BRUNSTING

Holder Account Number

[redacted]9041 IND

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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0000000000XOM SPP1 [redacted]9041

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

031624

ANITA BRUNSTING
203 BLOOMINGDALE CIR
VICTORIA TX 77904

Holder Account Number
[redacted]6352

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_rps.Enl..XOM.105024_40233/031624/032313/i

Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]6352

▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

Stock Class Description	Certificated Shares/ Units Held by You	Direct Registration Book Shares/Units	Investment Plan Book Shares/Units	Total Shares/Units	Closing Price Per Share/Unit ($)	Market Value ($)
DSPP - Common Stock	0.000000	0.000000	164.036963	164.036963	80.270000	13,167.25

Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

Record Date	Payment Date	Dividend Rate ($)	Stock Class Description	Dividend Reinvestment Shares/Units	Gross Dividend ($)	Taxes Withheld ($)	Net Dividend ($)
14 May 2012	11 Jun 2012	0.570000	Common	162.862369	92.83		92.83

Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

Date	Transaction Description	Transaction Amount ($)	Deduction Description	Deduction Amount ($)	Net Amount ($)	Price Per Share/Unit ($)	Transaction Shares/Units	Total Book Shares/Units
Plan Transactions DSPP - Common Stock								
	Balance Forward							161.975912
09 Mar 2012	Dividend Reinvestment	76.13	Comp Paid Fees	0.02	76.13	85.881244	0.886457	162.862369
11 Jun 2012	Dividend Reinvestment	92.83	Comp Paid Fees	0.03	92.83	79.031547	1.174594	164.036963

00TPPA (Rev. 12/11)

How to Read Your Statement

Please see reverse side for important information

Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]6352 SL1 IND

XOM
214UDR

1 Transaction Request Form

Please check or complete all applicable sections.

1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

1C Deposit Certificate(s) into the Investment Plan

[ ] **IMPORTANT:** You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the particular DRS/Plan facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

00WA2A-MOT (Rev. 8/11)

2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$ [ ]

- **No third party checks, money orders or credit card payments will be accepted.**
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING

Holder Account Number

[redacted]6352 IND

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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00000000XOM SPP1 [redacted]6352

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

007564

CAROLE A BRUNSTING
5822 JASON
HOUSTON TX 77074

Holder Account Number
[redacted]6328

Company ID XOM
SSN/TIN Certified Yes

Exxon Mobil Corporation - Direct Registration (DRS) Advice

Transaction(s)

Date	Transaction Description	Total Shares/Units	CUSIP	Class Description
15 Jun 2011	Transfer	1,325.000000	30231G102	Common Stock

Account Information: Date: 15 Jun 2011 (Excludes transactions pending settlement)

Current Dividend Reinvestment Balance	Current Direct Registration Balance	Total Shares/Units	CUSIP	Class Description
0.000000	1,325.000000	1,325.000000	30231G102	Common Stock

IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required.

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

P4395

40UDR XOM

00HSAB (Rev. 1/11)

Please see important PRIVACY NOTICE on reverse side of statement

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Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

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Exhibit 5

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Date	Gift	Stock price	amount	Person	purpose
Mom/Dad were trustees					
12/21/2010	trxfr		$ 7,000.00	Amy Brunsting	mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights
1/4/2011	trxfr		$ 6,000.00	Amy Brunsting	mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights
6/22/2009			$ 1,000.00	Amy Brunsting	college fund
7/14/2009			$ 1,000.00	Amy Brunsting	college fund
11/14/2007	chk# 5715		$ 5,000.00	Amy Brunsting	
1/20/2006	chk# 5143		$ 200.00	Amy Brunsting	
2/11/2002	chk# 3526		$ 200.00	Amy Brunsting	college fund
12/31/2002	chk# 3911		$ 200.00	Amy Brunsting	college fund
[redacted]					
10/2/2009	[redacted]				
2/8/2010	chk# 6518		$ 5,000.00	Anita Brunsting	
6/24/2009	chk# 6278		$ 1,000.00	Anita Brunsting	graduation gift to me for finishing my doctorate
7/14/2009	chk# 6294		$ 1,000.00	Anita Brunsting	college fund
9/8/2009	chk# 6338		$ 1,000.00	Anita Brunsting	college fund
10/19/2009	chk# 6403		$ 1,250.00	Anita Brunsting	
1/20/2006	chk# 5142		$ 200.00	Anita Brunsting	college fund
1/31/2006	chk# 5155		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
2/21/2006	chk# 5172		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
4/1/2006	chk# 5233		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
1/10/2003	chk# 3920		$ 200.00	Anita Brunsting	college fund
2/11/2002	chk# 3527		$ 200.00	Anita Brunsting	college fund
[redacted]					
3/17/2010	chk # 6386		$ 750.00	Candy Curtis	
1/27/2009	chk # 6124		$ 2,000.00	Candy Curtis	
7/29/2009	chk# 6309		$ 4,000.00	Candy Curtis	
7/8/2008	chk # 5917		$ 2,000.00	Candy Curtis	
8/3/2009	chk# 5944		$ 1,500.00	Candy Curtis	
7/6/2001	trxfr		$ 20,000.00	Candy Curtis	
1/19/2010			$ 5,000.00	Candy Curtis	
3/29/2010			$ 7,000.00	Candy Curtis	
6/22/2010			$ 20,000.00	Candy Curtis	Taken against inheritance (documentation on file w/ Vacek & Freed) expenses, divorce
[redacted]					
11/10/2005	chk# 5070		$ 10,000.00	Carl Brunsting	
3/12/2003	chk# 3986		$ 9,000.00	Carl Brunsting	
4/9/2003	chk# 4017		$ 11,000.00	Carl Brunsting	

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Schedule F

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Date	Gift	Stock price	amount	Person	purpose
9/17/2001	chk# 3347		$ 2,000.00	Carl Brunsting	
10/6/2010			$ 25,000.00	Carl Brunsting	medical bills
2010-2011			$ 21,899.61	Carl Brunsting	paid one medical bill ($1565.70) and to caretakers directly for his care from 7/13/2010 through 1/9/2011, (additional days occurred from Jan-April 2011 than included payment to caretakers as well as groceries and his medical supplies, but specific dates in this time period were not recorded)
	[redacted]				
6/27/2009	chk# 6285		$ 2,000.00	Carole Brunsting	
2/12/2009	chk# 5794		$ 500.00	Carole Brunsting	
3/18/2008	chk# 5821		$ 250.00	Carole Brunsting	
11/13/2007	chk# 5713		$ 600.00	Carole Brunsting	
1/5/2006	chk# 5129		$ 1,000.00	Carole Brunsting	loan?
7/1/2006	chk# 5287		$ 1,200.00	Carole Brunsting	
3/23/2005	chk# 4785		$ 450.00	Carole Brunsting	
12/8/2005	chk# 5090		$ 1,500.00	Carole Brunsting	
7/2/2005	chk# 4901		$ 350.00	Carole Brunsting	
10/2/2005	chk# 5016		$ 2,500.00	Carole Brunsting	
10/21/2003	chk# 4232		$ 1,000.00	Carole Brunsting	
12/12/2002	chk# 9878 ?		$ 1,500.00	Carole Brunsting	
12/17/2002	chk# 3883 ?		$ 5,000.00	Carole Brunsting	
3/23/2010			$ 7,000.00	Carole Brunsting	
5/18/2010			$ 1,000.00	Carole Brunsting	
10/1/2010			$ 20,000.00	Carole Brunsting	original intent to take against inheritance, but no letter/documentation found to date; will be treated as a gift; to fix house
	[redacted]				
10/2/2009	[redacted]				
Anita became trustee Dec. 2011					
5/11/2011	1120 shares exxon Survivors trust	$ 81.12	90854.4	Amy Brunsting	to pay off house
	Total Amy Brunsting		$ 90,854.40		
5/10/2011			$ 5,443.22	Anita Brunsting	pay off Luke's truck
6/3/2011			$ 5,750.51	Anita Brunsting	pay off Honda for Katie
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Anita Brunsting	borrowed against inheritance - for college expenses
6/15/2011	160 shares exxon Survivors trust	$ 78.66	$ 12,585.60	Anita Brunsting	borrowed against inheritance - for college expenses
	Total Anita Brunsting		$ 37,360.33		
4/7/2011			$ 3,000.00	Candy Curtis	property taxes
6/8/2011			$ 2,000.00	Candy Curtis	new bed?
6/15/2011	160 shares exxon Survivors trust	$ 78.66	$ 12,585.60	Candy Curtis	for reserve after mom passed away to keep helping her w/ expenses if trust money was not available

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Date	Gift	Stock price	amount	Person	purpose
8/24/2011			$ 2,000.00	Candy Curtis	expenses
10/26/2011			$ 2,000.00	Candy Curtis	medical bills
11/10/2011			$ 2,000.00	Candy Curtis	travel to see mom
	Total Candy Curtis		$ 23,585.60		
6/15/2011	1325 shares exxon Decedents trust	$ 78.66	$ 104,224.50	Carole Brunsting	to pay off/fix house
	Total Carole Brunsting		$ 104,224.50		
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Ann Brunsting UGMA (grandchild)	gift for future car/college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Jack Brunsting UGMA (grandchild)	gift for future car/college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Katie Riley UGMA (grandchild)	gift for college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Luke Riley (grandchild)	gift for college exp

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Exhibit 6

2016-25089 / Court: 280

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, et al	§	

Anita Kay Brunsting 's Response to Candace Louise Curtis' First Written Interrogatories

Anita Kay Brunsting serves her response to Candace Louise Curtis' first written interrogatories.

Respectfully submitted,

/s/ Brad Featherston

Stephen A. Mendel (13930650)
Bradley E. Featherston (24038892)
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Counsel for Anita Kay Brunsting
In Capacities at Issue

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Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Candace Louis Curtis
218 Landana Street
American Canyon, CA 94503
Tel: 925-759-9020

Pro Se

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224; F: 713-522-2218

Attorney for Drina Brunsting,
Alleged Attorney in Fact for
Carl Brunsting

Darlene Payne Smith
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Attorney for Carole Ann Brunsting

Neal Spielman
Griffin & Matthews
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O: 281-870-1124; F: 281-870-1647

Attorney for Amy Brunsting

via email on June 4, 2015.

/s/ Brad Featherston

Bradley E. Featherston

C2604 P0023 08080 5102C1420

Response to Written Interrogatories[1]

Anita Brunsting objects to Candace's interrogatories and request for production made pursuant to "fiduciary obligations." Interrogatories and request for production are exclusive to the Texas Rules of Civil Procedure and are not contemplated by the trust instruments nor any other applicable law. To the extent Candace's interrogatories and request for production are made pursuant to fiduciary obligations under the trust instruments then, pursuant to the trust, the Trustee requires that Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

1. In your exercise of discretion, which of the Founders' ten intended purposes and what aspects of the HEMS standard were factored into your determination to oppose a distribution to beneficiary Candace from her personal asset trust, and upon what set of facts did your determination rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, see Anita's response to Candace's request for distributions that was filed with the Court and which documents speak for themselves.

2. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Carole, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

3. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Candace, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

[1] Candace's Interrogatories were renumbered for the convenience of the parties and the Court.

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RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

4. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Amy, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

5. Which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in not transferring Exxon Stock to Carl, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, presumably the inquiry relates to the time period Nelva Brunsting was alive and Nelva Brunsting did not instruct an Exxon Stock transfer to Carl.

6. What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the distribution standards are as set forth in the trust instruments, which were interpreted as written.

7. What is/was the trustee's process for making discretionary distribution decisions?

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RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the process is as set forth in the trust instruments.

8. What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The trustee requires what the trust instruments provide.

9. Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, under which provision of what instrument(s)?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the trust instruments speak for themselves.

10. Does the trustee work with distribution advisors? If so, who and when? If not, why not?

RESPONSE: The trustee has not worked with distribution advisors. No distributions have been made since the Nelva's death due to the litigation filed by Candace and Carl.

11. When and how did the acting trustees inform the beneficiaries of their beneficial interests?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, prior to defendant's appointment as trustee, on or about October 23, 2010, Candace was informed of her beneficial interest via email. Shortly after Nelva's death in November 2011, the trustees and their counsel were in the process handling the trust affairs incident to Nelva's death. The trustees and

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their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries.

12. What types of distributions would the trustees like a beneficiary to receive?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

13. For what purposes can the beneficiary request a distribution from the trust?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the beneficiary can request a distribution for the purposes contained in the trust instruments.

14. When would the trustees like distributions to be made and in what priority?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, Subject to, and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

15. What circumstances should or should not exist prior to a distribution from "the trust"?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution.

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16. Who should be involved in the decision making process?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court and the parties to the litigation should be involved in the decision making process.

17. What factors does the decision-maker measure in determining the beneficiary's need for a distribution?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court would consider the factors set forth in the trusts.

18. Describe the steps you have taken to honor the provisions of Article X, Section B (1)(a)(i) of the Brunsting Family Trust?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The referenced section was superseded by Nelva and therefore, is inapplicable.

19. Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?

RESPONSE: After Nelva's death, defendant began the process of collecting assets, informing trust beneficiaries, and working the attorneys specifically referenced in such section to implement the terms of the trust instruments. The trustees and their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries. Candace then brought litigation.

20. A copy of the 8/25/2010 QBD was included in the October 23, 2010 email attachments. How did you come to be in possession of the 8/25/2010 QBD on October 23, 2010 when Nelva was the only then serving trustee?

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RESPONSE: Nelva provided defendant such instrument.

21. What was your forthright explanation to Nelva regarding the changes that you planned for her to make to the trust and what were the exact changes that you intended to be made?[2]

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and is a compound question. Defendant never planned to make any changes to the trust for Carl. It was defendant's understanding that Nelva planned to make changes to the trust. There was a concern by Nelva, defendant, and defendant's siblings that Carl's future well-being may not be met by Drina, and that Drina may take steps to reach Carl's share of trust assets. Nelva never signed the changes into effect.

22. Where are the documents you referred to that you intended for Nelva to sign?[3]

RESPONSE: To defendant's knowledge they were never signed. Defendant does not know what happened to such documents.

23. What was the date of your prior inquiry and why was the inquiry made more than one year after you were noticed of the existence of those EE Bonds?

RESPONSE: Candace and Carl consistently and repeatedly accused Carol of stealing bonds that were alleged to be in the name of Nelva or Elmer. Defendant did not see a record of the bonds being in the name of the trusts. In late 2014, Carol informed defendant that she could request a record of the outstanding bonds, which was done in mid to late 2014.

24. What claim(s), if any, were you asking to be processed?

RESPONSE: None.

25. Did you subsequently submit the properly completed forms? If no, why not? If yes, what were the results and where are the transaction records?

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[2] This is a question about a March 8, 2011 email from Anita.

[3] This is a question about a March 8, 2011 email from Anita.

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RESPONSE: No, because Candace would not agree to the disposition of the bonds and the legal fees to seek court approval to cash the bonds in light of Candace's failure to agree made the transaction cost prohibitive.

Defendant objects to the balance of the interrogatories as exceeding the limits of permissible discovery under the Texas Rules of Civil Procedure. Defendant further objects to the balance of the interrogatories because Candace has not paid Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary,

(a) The decedent's trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year. Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you been given regarding income taxes paid by the trusts, if any?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) When considering funding for Mother's day-to-day needs prior to the establishment of the Rights of Survivorship account in the name of Carole Brunsting and Nelva Brunsting, what criteria did you use when you liquidated assets in the Edward Jones account? Was avoidance of capital gains tax a factor? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

5. Trustee Manual: The Bates stamped documents included in Plaintiff's document production P6-P155, "MyTrustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

(a) Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

i. Which of the eight "Do's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Which of the eight "Do's" have you not done?

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RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iii. Which of the nine "Do Not's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iv. Which of the nine "Do Not's" have you not done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

6. Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

7. Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

8. Please refer to the RESPONSE OF DEFENDANTS TO REPORT OF MASTER, filed

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August 27, 2013, and answer the following:

Regarding trustee compensation,

(a) At the point in time when you paid your personal credit card debts from trust assets, were you aware that paying personal debt obligations directly out of trust accounts can be considered self-dealing or co-mingling, whether you were entitled to trustee compensation or not? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Appendix A, Section 1. states that Vacek & Freed determined the percentage amount of your fee to be 2% of the trust value of $2,291,300, or $45,826.00. What date was the fee calculation determined? What trust was the value based upon? What trust assets and their corresponding values were used in the calculation? Why was this calculated on an annual basis, rather than monthly or quarterly, since the value of the trust diminished every single month? What provision(s) in the trust set forth the standard for calculating this rate of compensation?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

9. Please refer to George Vie's July 15, 2013 letter to the Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, and the distribution you received in 2005 to pay off your house.

Your letter states that:

"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses." Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Amy and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of influence addressed to the Special Master.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in

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the Texas Rules of Civil Procedure.

(b) Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) In general the July 15, 2013 letter to the Master attempts to provide excuses for the sudden acceleration of dissipation of mass quantities of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity. What was the distribution standard applied to those transactions? What effect did these transactions have on the value of the trust assets, trust tax liabilities, and the personal tax liabilities of the recipients? What were the facts upon which discretion was exercised in each of these transactions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." It is presumed you knew of this fiscal incompetence before accepting the appointment to a fiduciary office. Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(f) In a letter dated May 22, 2012, Edward Jones states "We're contacting you because either your financial advisor recently updated your account information or it has been three years since we last verified your information." It goes on to ask you to "Please review the enclosed pages, which list your account information. If the information is correct, you do not need to return this letter." This information contains the following:

Net Worth (must exclude value of primary residence): $1,700,000

Annual Income: $64,000

Prior Investment Experience: (4) Extensive Experience

Not Official Document

5502 - 5980 - 5 - 2015 - 7

Risk Profile: (3) Moderate

Current Occupation: Homemaker

Did you return the letter? If not, why not? When did you provide this information to Edward Jones originally?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

10. The following questions refer to information contained in the 2011 Form 1040 for Nelva E Brunsting, prepared by Kroese & Kroese P.C., signed by you as fiduciary "Under penalties of perjury".

(a) Line 15a IRA distributions = $58,792 / 15b Taxable amount = $58,792. On February 24, 2010, Mother executed a Change of Beneficiary Designations for IRA Account at Edward Jones, designating the five of us as " beneficiaries in equal shares". A previous List of Beneficiaries under Edward Jones letterhead, dated July 23, 2009, stated the same designation. On May 23, 2011, an electronic transfer was made from the IRA account number 609-91956-1-9, to the B of A account ending in 1143, in the amount of $54,000.

i. Were you aware of Mother's beneficiary designation for her IRA? If yes, why did you fail to follow it? If no, how could you not be?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Did you know this transaction would cause a tax liability for Mother?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Schedule A Medical and Dental expenses are listed as $118,893.

i. Many of the caregiver payments contained reimbursements for meals and incidental expenses purchased on behalf of our Mother. Were these reimbursementsincluded in the caregiver costs? If so, what is the total for these reimbursements? Did the preparer know these reimbursements were included? If so, please provide support of the preparer's knowledge.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. IRS Publication 926 Household Employer's Tax Guide sets forth the rules for employment taxes. You were required to withhold and pay social security and Medicare taxes on the wages. As the employer you can choose to pay this yourself and not withhold it. Did you

UNOFFICIAL COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	*	Civil No. H-12-592
	*	
VERSUS	*	Houston, Texas
	*	April 9, 2013
ANITA KAY BRUNSTING, et al	*	9:50 a.m.

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?
MS. CURTIS: Yes, family farm in Iowa.
THE COURT: That was sold?
MS. CURTIS: No, it was not.
THE COURT: What's on the farm that's increasing these prices? What are they harvesting?
MS. CURTIS: Corn and soybean.
THE COURT: Is that for profit or just simply --
MS. CURTIS: To my understanding we have a lease with the farmer.
THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.
MS. CURTIS: Yes.
THE COURT: Those assets or that money goes into the estate?
MS. CURTIS: I believe so.
THE COURT: And that accounts for some of the increase, as you understand them?
MS. CURTIS: Yes.
THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?
MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____
Fred Warner, CSR
Official Court Reporter

RV

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ESTATE OF	§	**IN PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	**IN PROBATE COURT**
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	**NUMBER FOUR (4) OF**
	§	
	§	**HARRIS COUNTY, TEXAS**

CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

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COMES NOW Drina Brunsting, as attorney-in-fact for Carl Henry Brunsting, individually, filing this Motion for Protective Order with regard to improper audio and video recordings produced by Anita Brunsting ("Anita"), as well as additional recordings obviously still in the possession of Anita, Amy Brunsting ("Amy"), Carole Brunsting ("Carole"), and third parties to whom the recordings have been disclosed. In support of this motion, Carl would show as follows:

1. When Anita became trustee, Carl was excluded from distributions from his parents' trusts. In fact, Carl's entire family was even excluded from discussions concerning the trusts. But both Carole[1] and Candy told Carl and Drina about what appeared to be improper actions that had been taken. So, on March 9, 2012, before Carl ever filed this action, he requested information pursuant to Tex. R. Civ. P. 202.

2. One thing which had been revealed to Carl was the placement of a GPS tracking device on his wife Drina's car without her knowledge by an investigator hired to follow her. Carl suspected that recordings had also been made of conversations between one or more of the Defendants and either Carl or Drina, so copies of recordings were also requested in 2012. In light of the GPS tracking device placed on Drina's car, perhaps it should not be–but it still is–a surprise to learn just how far the recordings went. The recordings, at least the ones which have only recently been produced, included recordings of telephone conversations made without the consent of ***either*** party to the conversation.

---

[1] At various times, Carole has taken different positions on whether there was wrongdoing and by whom. It is pretty obvious what causes Carole's changes of heart. Despite complaining about Anita's efforts to gain control over the trusts, Carole made video recordings from Carl's hospital room in late May, 2011 and sent them to Anita and Amy. It can not be a coincidence that on June 15, 2011, Carole received a transfer from Anita of 1325 shares of Exxon Mobil stock. Likewise, it can not be a coincidence that Carole stopped complaining about Anita. This stock transfer, among others, is the subject of Carl's Motion for Partial Summary Judgment.

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3. In addition to emails between the Brunsting family members, included among the items Carl sought from Anita, Amy, and Carole in March, 2012 were:

- All audio or video recordings of meetings, conversations, telephone messages, or other communications with Elmer, Nelva, or any of the Brunsting Descendants[2] concerning Brunsting Issues,
- All audio or video recordings of Nelva's execution of any documents.
- All audio or video recordings of evaluations of Nelva's capacity,
- All other audio or video recordings of any Brunsting family member, and
- All investigations made of any Brunsting family member, including any surveillance logs or reports.

4. When Carl made his Rule 202 filing, Anita and Amy hired an attorney, Bernard Mathews, who obtained a continuance of the hearing on Carl's Rule 202 requests by providing Anita's unsupported summary of trust activity and agreeing to provide, on a voluntary basis, what was being sought. Mr. Mathew's email dated April 11, 2012 about obtaining the information sought is attached as Exhibit 1. Mr. Mathews indicated in discussions with Carl's counsel that everything in his clients' possession which had been requested would be turned over. Six days later Mr. Mathews was fired. Attached as Exhibit 2 is the email by which Carl's counsel was notified there would be a change of counsel.

5. Thereafter, when Anita and Amy retained Mills, Shirley LLP as their new counsel, the Rule 202 hearing was again continued as to Anita and Amy, at their new counsel's request, so

[2] "Brunsting Descendants" was defined in the document to include Candace, Carole, Carl, Amy, Anita, and the children and grandchildren, if any, of Candace, Carole, Carl, Amy, and Anita.

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that information could continue to be gathered. The issue of Carole providing information was not delayed further, however, and an order requiring Carole to provide her information was signed on May 18, 2012.

6. While some documents were ultimately provided by Anita, Amy, and Carole, including a number of boxes made available for review at Mills, Shirley's offices in Galveston, very few emails were produced and no one produced any recordings or investigator's reports. Amazingly, on September 9, 2014 even though actively trying to negotiate a settlement in the case, Mills, Shirley suddenly sought to withdraw from its representation of Anita and Amy claiming that "a conflict had arisen between the parties and the attorneys." The Mills, Shirley withdrawal was allowed on September 18, 2014. At that point, there had still been a lack of production of emails, recordings and investigator's reports.[3]

7. Anita's current counsel entered his appearance in this matter on November 14, 2014, and Amy's current counsel entered his appearance on December 8, 2014. Through no less than 9 supplemental productions made since Mr. Featherston took over as Anita's counsel, no recordings or investigator's reports had been provided, but emails addressing points Anita wanted to address began to show up as attachments to certain filings (See Anita's Objections to Candace Curtis' Application for Personal Representative filed on March 9, 2015, to which six emails previously unproduced by Anita were attached to obviously cast Candy in a very derogatory light).

8. Then on July 1, 2015, Carl's counsel received an envelope by certified mail from Anita's counsel which enclosed a CD containing supplemental production which had apparently

---

[3] The Defendants continue to just ignore the investigator issues even though there can be no question there was an investigator. Attached hereto as Exhibit 4 are emails exchanged among Anita, Amy, Carole, and Candy about the investigator, including one dated Tuesday, March 15, 2011 in which an investigator's report is said to be expected by the end of that week. (Exhibit 4, page P14675)

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been disclosed, at a minimum, to everyone else in the case. For various reasons, including the July 4 holiday, Carl's counsel was unable to adequately review all the information on the disk when it first arrived. Once the materials had been reviewed, however, it was obvious that the disk contained illegally obtained recordings.

9. The disk received by Carl's counsel on July 1, 2015 contained items which were numbered 5814 to 5840. Included among those items were the following four audio recordings, at least three, and most likely all, of which were made without the consent of either party to the conversations:

(1) a 43 second phone conversation between Carl and his mother which, according to the file properties, was both created and modified on February 27, 2015[4] (Brunsting 5836.wav);

(2) a phone conversation lasting 6 minutes and 44 seconds between Carl and Drina which, according to the file properties, was both created and modified on February 27, 2015 (Brunsting 5837.wav);

(3) a telephone conversation lasting 19 minutes and 18 seconds between Carl and Drina which, according to the file properties, was both created and modified on April 22, 2011 (Brunsting 5838.wav); and

[4] Nelva Brunsting died on November 11, 2011, so this could not have been just a copy of the original recording. The larger question raised by the dates on the audio files, however, is why they were not produced long ago. Who recorded them, where have they been, and to whom have they been given? Is this perhaps why Mills, Shirley suddenly had to withdraw? It seems unlikely that there can be a reasonable excuse for why these recordings, all made in 2011 and dealt with by someone again in February of this year, were not produced until July. That is particularly puzzling when on March 11, 2015 Anita filed a Motion to Compel complaining that Carl had not been specific enough about his damage disclosures and had not turned over all of his attorney's fee invoices.

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(4) a telephone conversation lasting 8 minutes and 53 seconds between Carl and Drina which, according to the file properties, was both created and modified on March 21, 2011 (Brunsting 5839.wav).

10. The audio recordings[5] provide a basis for liability to both Carl and Drina pursuant to the Texas Civil Wire Tap Act found at Tex. Civ. Prac. & Rem. Code, Title 123.[6] That Act prohibits, among other things, the interception of a conversation transmitted over telephone wires without the consent of at least one of the parties to the conversation, as well as the further disclosure and the use of such intercepted transmissions. Neither Carl nor Drina consented to the recordings or even knew about them. The same is undoubtedly true of the recording of the short conversation Carl had with his mother. These recordings were made improperly, disclosed improperly, presumably have been already used improperly, and are obviously intended to be used improperly in this litigation.

11. Although they have clearly been edited, nothing on these recordings suggests they were somehow found on an answering machine tape at Nelva's house as Anita's counsel claimed to be the case in discussions with Carl's counsel about these recordings. There is nothing on the recordings indicating the involvement of an answering machine. There is nothing on the recordings indicating an answering machine either picked up or ended the call. There is no answering machine message alerting anyone to a recording device. In fact, there is also nothing on the recordings themselves indicating the date on which they were recorded. The other flaw with the answering machine explanation is that when Drina called Carl at his mother's house, an answering machine never answered–a person always did. The timing of the earliest recording together with emails from

[5] It seems highly unlikely, of course, that these are the only recordings made or that those that have been produced are anything but edited versions of the original recordings.

[6] The recording, disclosure, and use of these recordings are also felony violations of Section 16.02 of the Texas Penal Code and 18 U.S.C. §2511.

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that time period make the real explanation for the recordings clear, but very problematic for Defendants.

12. These appear to have been made through a well-orchestrated plan between Anita, Amy, and Carole. Emails reflect discussions among the Brunsting sisters shortly after Carl became ill–both before and after Anita was even trustee–discussing ways to prevent Carl's access to trust disbursements. (See Exhibit 5). Originally, Candy was also involved in the plan until the explanations she was being given for what was happening stopped making sense.[7]

13. Carl spent some time at his mother's house in December, 2010 when Drina suffered a herniated disc in her back trying to lift him. Carl's recovery suffered so badly while he was staying at his mother's house that Drina was forced to end that arrangement. By that time, the experience of trying to deal with Carl's sisters had been bad enough that Drina stopped even trying to communicate with them, and Carl only called his mother. Then in early March, 2011, there are emails concerning APS complaints,[8] investigators, possible guardianship proceedings, and arrangements for a possible divorce between Carl and Drina so that Drina would not be Carl's natural guardian.[9] (See Exhibit 6).

14. In March, Carole also did her part to insure both that recordings could be made of Carl and Drina's conversations without their knowledge and that Drina could be followed by the

---

[7] Thus, the only emails which have been shared with Carl are those exchanged before Candy was excluded from her sisters' scheme.

[8] The attempt to create problems for Drina with APS had already been frustrated when their APS complaint against Drina was dismissed because, unlike what had occurred when Carl was at his mother's house, Drina was following medical advice in her care of Carl. (Exhibit 6, p. P14664).

[9] There were also discussions about how to exclude Carl and Drina's daughter, Marta, as a potential guardian. Even though Marta had made her concern for her father clear (See Exhibit 7), she was characterized by Anita as having "expressed no interest in taking care of her father" (Exhibit 5, p. P14677).

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investigator. On the evening of March 10, 2011, Carole went to Carl and Drina's home and approached Drina about having Carl spend time at his mother's home again–allegedly to give Drina a break as Carl's sole caregiver and to give Carl somewhere to go when Drina had to work or had to deal with her elderly father who lived in Beaumont. Drina naively believed Carole's concern to be sincere and agreed to allow Carl to spend some time at his mother's house again.

15. So, in March, 2011 the investigator had already been engaged, and on March 17, 2011, Faustino Vaquera purchased one ICD-OX312 Sony digital voice recorder at Best Buy and a 4200223 3' 1/8" M-M Patch Cable from Radio Shack. Vaquera was reimbursed for the purchase when he included it on his time sheet dated March 18, 2011. The time sheet with the attached receipts is attached hereto as Exhibit 3. That digital voice recorder is capable of voice activation and has 2 GB built-in memory which can be expanded to 16 GB. The earliest recording, based on the properties for the files produced was made at least by March 21, 2011, right after Carole made sure recordings of calls between Drina and Carl could be intercepted by getting Carl back to his mother's house.

16. The CD recently produced by Anita's counsel also included various emails which have suddenly appeared out of some unknown location despite having been requested since March, 2012, including four emails from Carole to Amy and Anita between May 23, 2011 and May 25, 2011 which had attachments containing videos taken by Carole of Carl in his hospital bed after he had an adverse reaction to a medication which was itself life threatening and put him in intensive care at St. Luke's Hospital from May 22, 2011 through May 31, 2011.[10] (Brunsting 5822-5825).

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[10] While Carl was at Mentis Rehabilitation, Drina observed a sudden and severe decline in Carl's condition and had him transferred to the St. Luke's emergency room where he was admitted to ICU because of an altered mental status due to medications.

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17. Even a sister's concern would not justify these recordings, but there is no way to confuse these incredible invasions of Carl's privacy as acts of a loving and concerned sister. These occurred while Carl was too ill to resist them and when no one was around to prevent them. After making the recordings on her Android, Carole sent them to herself and to Anita and Amy.[11] Candy was again excluded, as one of Carole's emails even confirms. Like the illegal phone recordings, Carl did not consent to these video recordings and even in his incredibly ill state, it was clear he was very uncomfortable with them. Also like the illegal phone recordings, these had never been provided to Carl despite his request for any video recordings in 2012. The properties on the files containing the emails indicate the files were all modified on March 18, 2015. It is inexcusable that these were ever made and that they have disclosed to others while being withheld from Carl since May, 2011, but where have they been since March 18, 2015?[12]

18. This Court must stop Carl's victimization at the hands of the Defendants, particularly those purportedly exercising fiduciary obligations to him. Carl requests that sworn affidavits be provided by Anita, Amy, and Carole specifying the date of every recording made within the categories requested, the party making the recording, the means of recording, the current location of all original recordings and all copies of all recordings, all parties to whom the contents of recordings have been disclosed, and all uses which have been made of the recordings. Carl also requests that all original recordings and all copies of those recordings be turned over to Carl's

---

[11] The recordings appear to have been made by Carole and distributed to Anita and Amy between May 23, 2011 and May 25, 2011. Carole received her transfer of 1325 shares of Exxon Mobile stock from Anita, acting as trustee, on June 15, 2011.

[12] And there has still been no production of the investigator's reports. Yet, as already stated, while withholding this and more, Anita filed a motion to compel Carl to do a better job of responding to requests for disclosure and to provide all of his information on the attorney's fees he had incurred, something which no one else in this case has been required to do.

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counsel. Carl also requests that all copies which have been disclosed to any third parties, including the other counsel in this case, be retrieved and included in those materials turned over to Carl's counsel. Carl also requests that the identity of all investigators hired to follow Carl or Drina be provided, and that all investigator's reports be turned over. Carl also requests that Anita, Amy, and Carole be required to provide sworn testimony of their compliance and that they be prevented from using such recordings for any purpose, including in this proceeding.

WHEREFORE, PREMISES CONSIDERED, Carl Brunsting asks for the relief sought herein and for such other and further relief to which he may be entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

Bobbie G. Bayless
State Bar No. 01940600
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Drina Brunsting, attorney-in-fact for Carl Henry Brunsting

07222015:0815:P0144

CERTIFICATE OF CONFERENCE

Attempts to resolve these issues have thus far been unsuccessful. Discussions are continuing and the motion will be withdrawn if they are resolved.

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 20th day of July, 2015, as follows:

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
via Telecopier

Stephen A. Mendel
Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
via Telecopier

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
via Telecopier

Candace Curtis, *Pro Se*
218 Landana St.
American Canyon, California 94503
via Email

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

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07/22/2015 08:05:45 1502222

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Exhibit 1

07/22/2015 05:30:52 PM

BaylessStokes E-Mail

From: "Bernard Mathews" <texlawyer@gmail.com>
To: "Bobbie Bayless" <bayless@baylessstokes.com>
Sent: Wednesday, April 11, 2012 2:27 PM
Subject: Producing available documents

Bobbie,

I am having my client go through your 30 page list to let me know what she has, what never existed, what may exist in someone else's control, etc.

To make my response to you easier, can you send me this list (documents to be produced by Anita Brunsting) in Wordperfect or Microsoft Word format?

I am also advised your client was sent a copy of the trust, and the qualified beneficiary designation. as well as an initial asset list in Excel format. Were these provided to you?

Chip Mathews

--
Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

(281) 580-8100
(281) 580-8104 (fax)

e-mail: texlawyer@gmail.com

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Exhibit 2

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6/15/2015 5:09:53 PM 20152926

BaylessStokes E-Mail

From: "Bernard Mathews" <texlawyer@gmail.com>
To: "Bobbie Bayless" <bayless@baylessstokes.com>
Cc: "Anita Brunsting" <akbrunsting@suddenlink.net>; "Amy Brunsting" <at.home3@yahoo.com>
Sent: Tuesday, April 17, 2012 12:31 PM
Subject: Brunsting matter

Bobbie,

I have been advised that Anita Brunsting and Amy Brunsting are retaining new counsel. Thank you for your courtesies in this matter.

Chip Mathews

--
Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

(281) 580-8100
(281) 580-8104 (fax)

e-mail: texlawyer@gmail.com

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Exhibit 3

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TIME SHEET

Employee Name: Faustino Vanuera **Title:**

Week: March 15 — March 19

Date	Start Time	End Time	Regular Hrs.	Total Hrs.
3-15 Tues	8:30 am	12:00 am	15.30	
3-16 Wed	12:00 am	2:00 pm	14.	
↓	4:00 pm	12:00 am	8	
3-17 Thur	12:00 am	9:30 am	9:30	
3-[redacted]	6:30 pm	12:00 am	5:30	
3-18 [redacted] Fri	12:00 am	6:00 pm	18.	
	WEEKLY TOTALS:		70 ½	

Employee Signature: [signature] **Date:** 3-18

Supervisor Signature: **Date:**

70.5
x 15.00
= 1057.50

Groceries & Food = 126.26

Best Buy Digital Voice Recorder 64.94

191.20

Total = 1,248.70

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WELCOME TO BEST BUY #216
HOUSTON, TX 77024
(713)647-6004

Keep your receipt!

Val #: 0422-1046-6045-3089

0216 003 2499 03/17/11 18:22 00005044

1792142 ICDPX312 59.99
ICDPX312 DIGITAL VOICE RECORD
ITEM TAX 4.95
6094193 RZ SILVER 0.00 N
REWARD ZONE PREMIER SILVER
MEMBER ID 0329918420

SUBTOTAL 59.99
SALES TAX AMOUNT 4.95
TOTAL 64.94

xxxxxxxxxxx0307 DEBIT 64.94
FAUSTINO VAQUERA JR
APPROVAL 132943
REFERENCE NUMBER: 0216003

ALEX,
THANKS FOR SHOPPING AT BEST BUY TODAY!
YOUR REWARD ZONE BALANCE AS OF 03/08/11
POSTED POINTS: 153
Go to MyRZ.com FOR MORE INFO

Congratulations! As an added benefit of being a Reward Zone program Premier Silver member, you may return eligible products up to 45 days from purchase date.

Dear Valued Customer,

To help keep epicenter [illegible]

directly or indirectly by the products listed on this receipt.

THE SHACK THANKS YOU.

RADIOSHACK 01-6820
Kroger Plaza Sc
14356 Memorial Dr
Houston, TX 77079-6704
(281) 496-9429

Order: 057553 03/17/2011 08:14P Term #002

Helped By: 001 (HAR)
Entered By: 001 (HAR)

4200223 3' 1/8' M-M PATCH CABLE 1 8.99

Subtotal 8.99
Tax 8.25% 0.69
Total 9.08

Credit Card 9.08

Change Due 0.00

Acct# xxxxxxxxxxx0307 M
Card Type VI
Trans 12887148
Auth# 161235 9.08
Host Captured Y

The card holder identified hereon may apply the total amount shown on this receipt to the appropriate account to be paid according to its current terms.

I agree to pay above total according to card issuer agreement.

Your name, address and the original sales receipt are required for all refunds. Sales and returns are subject to the terms and conditions identified on the back.

Shop online 24/7 at
www.radioshack.com

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8/22/2016 5:08:20 PM 52

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Exhibit 4

UNOFFICIAL COPY

07-22-2015 08:53:03 a.m.

From: Amy Tschirhart
To: Candy Curtis
Subject: Phone number
Date: Saturday, January 08, 2011 7:34:13 PM

Hi Candy,
Could you send me Owen's phone number? I wanted to ask him a question about private investigators.
Thanks,
Amy

P14660

07222015 05:05:50 p.m. 547

From: Carole Brunsting
To: Amy; Anita; Candace Curtis
Subject: Re: PI
Date: Thursday, February 03, 2011 3:57:21 PM

I drove by their house today on the way home and their plants were covered.

--- On **Thu, 2/3/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: PI
> To: "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Thursday, February 3, 2011, 9:56 AM
>
> I think we should hire a PI to "find" Carl. If he's at home, he's got to come out sooner or later. If he's in a facility, Drina will have to come out to visit him sooner or later. The problem is, no one knows when these comings and goings will occur and it could cost a lot of money to find out. It's entirely possible that Drina has put him in a facility that is covered by insurance. This makes sense because there have been no requests for money and Carl hasn't called anyone but Mother since he left her house. In any event we have to find out what is going on. If he's in a rehabilitation facility we can celebrate, but she could have stuck him in a nursing home, where none of his needs will be addressed and they will keep him doped up all the time.
>
> The more legwork we do, the cheaper the PI will be. Any ideas on how to find out when his therapy appointments are? If the PI can film him leaving the house and entering the facility we would be able to assess his physical condition and possibly his mental state. If he's in a facility somewhere the PI would have to catch her leaving the house on her way to visit him and if she leaves she could also be going shopping, etc. I would be willing to call rehab facilities if necessary.
>
> I don't want to let too much more time lapse before we find out.

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02/22/2012 05:03:03 PM

From: Anita Brunsting
To: "Candace Curtis"; "Amy"; "Carole Brunsting"
Subject: RE: Conference Call Info
Date: Tuesday, March 15, 2011 3:45:57 PM

I'm pretty open all week.

From: Candace Curtis [mailto:occurtis@sbcglobal.net]
Sent: Tuesday, March 15, 2011 3:10 PM
To: Amy; Anita; Carole Brunsting
Subject: Conference Call Info

I have a conference call account here at work that I am allowed to use for personal business. We can schedule a time to talk and catch up on what's happening. This saves numerous text messages, phone calls, and emails.

Call 1-866-212-0875 and when it asks you for the "participant" pass code enter 132003#

Maybe we can try it towards the end of the week or on the weekend, after someone gets an activity report from the PI.

Love you guys,

C

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07220165:06:36:PD15G

From: Carole Brunsting
To: Anita Brunsting; Amy Tschirhart; Candace Curtis
Subject: Re: guardianship assessment form
Date: Friday, March 18, 2011 8:40:41 AM

They are there right now according to the PI. And Michael took him on Wednesday.

--- On **Fri, 3/18/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: guardianship assessment form
To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
Date: Friday, March 18, 2011, 10:33 AM

Do you know if he went to therapy at all this week?

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Carole Brunsting <cbrunsting@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Fri, March 18, 2011 8:26:05 AM
Subject: RE: guardianship assessment form

we're continuing the pi over the weekend or unless it looks like she's headed toward Beaumont - will also use him through next week. $750 is for the lawyer's (Cole) initial consult not a dr. If she divorces him then someone needs to sue for guardianship - Marta would be considered next in line by the law, but if she doesn't sue for it then I don't think she'd be considered. If Drina gets him to sign divorce papers that give him any less than 50% of their assets then a guardian can countersue her to recover those.

From: Candace Curtis [mailto:occurtis@sbcglobal.net]
Sent: Friday, March 18, 2011 10:20 AM
To: Anita Brunsting; Carole Brunsting; Amy Tschirhart
Subject: Re: guardianship assessment form

$750 an hour FOR WHAT? The woman is abusing him and negligent in his care. Have they been out even one time this week? Last I heard, Monday and Tuesday there was no activity other than a visit from Marta. APS said that once they confirmed she was following doctor's orders, they closed the case. If the instructions were 3 times a week and he hasn't been, or only goes once or twice, SHE IS NEGLIGENT, and they better reopen it or start a new one. Let me know if you want me to call.

Any doctor who has seen Carl would most likely say NO to all of the questions. I would, just based on past phone conversations with Carl.

What if Drina files for divorce? Would that be abandonment? Would the trust even be an issue if SHE divorces him?

If I could have anything I wanted for Carl, I would have him assessed by the neuropsychologists at the place I found in Houston. I don't know if he could handle long periods of testing, but he has got to get some cognitive brain function back OR HE WILL NEVER EVEN BECOME CLOSE TO WHOLE AGAIN. It's a good sign that his

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behavior has improved, but is it because she beats him with a stick and mentally assaults him to get him to act right?

Maybe guardianship is the wrong approach. Maybe we should go after Drina and have her declared incompetent to care for him, or criminally negligent for not obtaining proper rehabilitation. There has to be a reason why she doesn't want her husband of almost 30 years to recover.

Let me know if he will be staying at Mother's again over the weekend. If so, we might want to extend the PI over the weekend so we can see what the hell she does. The more "evidence" we can amass, the better.

Love you guys,

C

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Thu, March 17, 2011 2:18:05 PM
Subject: guardianship assessment form

Just thought you'd find this interesting, this is the form that we'd have to have a physician use to assess Carl and possible a MHMR psychologist as well. I just thought it would give you an idea as to what they're looking for - Carl definitely fits the bill -

Just fyi, you may have already known this.

Anita

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9/22/2015 09:36:45 pm

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Exhibit 5

07220155:06:36:40158

From: Carole Brunsting
To: Anita Brunsting; Amy Tschirhart; occurtis@sbcglobal.net
Subject: Re: Carl"s medical bills
Date: Tuesday, August 17, 2010 7:37:48 PM

http://www.nytimes.com/2009/03/14/health/14patient.html

Another good article about negotiating down the bill. Drina needs to treat this as if the trust money does not factor in. It should be months before she sits down to make even one payment.

--- On **Tue, 8/17/10, Carole Brunsting *<cbrunsting@sbcglobal.net>*** wrote:

> From: Carole Brunsting <cbrunsting@sbcglobal.net>
> Subject: Re: Carl's medical bills
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Amy Tschirhart" <at.home3@yahoo.com>, occurtis@sbcglobal.net
> Date: Tuesday, August 17, 2010, 9:24 PM
>
> http://www.creditcards.com/credit-card-news/medical-bill-payment-tips-1266.php
>
> Here is another good article. Why can't she follow this and set up a payment plan and then Mother can help with the monthly payments rather than yank thousands out of the account. I don't think Drina has done any of the steps this article talks about. She should tell the hospital that they cannot pay since Carl is not working and don't even mention the trust.
>
> --- On **Tue, 8/17/10, Carole Brunsting *<cbrunsting@sbcglobal.net>*** wrote:
>
> > From: Carole Brunsting <cbrunsting@sbcglobal.net>
> > Subject: Carl's medical bills
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Amy Tschirhart" <at.home3@yahoo.com>, occurtis@sbcglobal.net
> > Date: Tuesday, August 17, 2010, 9:08 PM
> >
> > http://www.hcvadvocate.org/hepatitis/hepC/GMYHI.html
> >
> > According to this Drina may have already reached her out of pocket and may be paying to much already.
> >
> > This is a good article.

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07220165:0813:P0160

From: Amy Tschirhart
To: Anita Brunsting; Candy Curtis; Carole Brunsting
Subject: Re: CPA"s advice
Date: Wednesday, August 18, 2010 1:48:01 PM

Hi,
I just talked to Drina. She is tired of hearing advice (even if it is helpful and right). Basically she's just overwhelmed right now. Her nerves are raw and anything any of us say to her right now is just going to set her off. I suggest just leaving her alone for a little while. The bills aren't going to go away and she will eventually have to deal with them. She may be more receptive to listening then or she might figure out the solution on her own.

Amy

--- On **Wed, 8/18/10, Carole Brunsting <*cbrunsting@sbcglobal.net*>** wrote:

> From: Carole Brunsting <cbrunsting@sbcglobal.net>
> Subject: Re: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candy Curtis" <occurtis@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> Date: Wednesday, August 18, 2010, 1:36 PM
>
> That is exactly what the articles I sent last night said. Your credit score is only affected "IF" you stop making payments in the event you have a payment plan set up. Also, it said that she needs to negotiate discounted rates based on their financial statements and leave the trust out of it. Like Candy said, don't even mention the trust. From everything I have read, she can either get some of this written off OR get it discounted and set up a payment plan. If she and Carl cannot make ends meet in the future, then they consider a loan against his inheritance.
>
> I am finding that with GOOGLE, you don't really needs doctors or CPA's because all the diagnostic information is online along with accounting advice.
>
> Knowing I am being petty with this statement, why is her father's advice correct and mother is not a straight shooter. Mother was shocked because she did not think the time was right to pay bills, but could not convey that message to Drina.
>
> I grow tried of always being "wrong" in the eyes of Carl and Drina. Again, being petty but then I am just petty. So there.
>
> --- On **Wed, 8/18/10, Amy Tschirhart <*at.home3@yahoo.com*>** wrote:
>
> > From: Amy Tschirhart <at.home3@yahoo.com>
> > Subject: CPA's advice
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Candy Curtis" <occurtis@sbcglobal.net>

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EXHIBIT 5 - 2012-2013

Date: Wednesday, August 18, 2010, 2:57 PM

Hi,

I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.

She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.

I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing ***any*** of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

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07220150815:4016162

From: Carole Brunsting
To: Candace Curtis
Subject: Re: CPA"s advice
Date: Wednesday, August 18, 2010 2:18:39 PM

Your so funny!

--- On **Wed, 8/18/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> Date: Wednesday, August 18, 2010, 3:49 PM
>
> Just as I said in my email. I also said DO NOT consult an attorney. It's throwing good money away because you have just received free advice and passed it along to her. So, that's what you told her, that's what I told her, and that's what her Dad told her. Is she going to ignore all of us? Drina needs to get her shit together now or she'll be sorry. Carl can come and live with us when she runs off.
>
> --- On **Wed, 8/18/10, Amy Tschirhart <*at.home3@yahoo.com*>** wrote:
>
> > From: Amy Tschirhart <at.home3@yahoo.com>
> > Subject: CPA's advice
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Candy Curtis" <occurtis@sbcglobal.net>
> > Date: Wednesday, August 18, 2010, 12:57 PM
> >
> > Hi,
> >
> > I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.
> >
> > She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.
> >
> > I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she

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really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing ***any*** of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

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D-2525-5-09-5-2015-54

From: Anita Brunsting
To: "Candace Curtis"
Subject: RE: CPA"s advice
Date: Wednesday, August 18, 2010 8:00:01 PM

You couldn't invent a better helpless, narcissistic, stupidly rude character than her. I guess this is why they say "truth is stranger than fiction" I've already been inventing scenrios inside my head that I think she'd be capable of. Maybe we can write an novel about this and make a million dollars when we sell the movie rights :-)

Love, anita

From: Candace Curtis [mailto:occurtis@sbcglobal.net]
Sent: Wednesday, August 18, 2010 5:39 PM
To: Anita Brunsting
Subject: RE: CPA's advice

My ears are burning already. LOL If she gets pissed off it will just confirm my opinion that she's a stupid twit who only cares about herself. I know I read too much fiction, but I can imagine her keeping Carl in diapers so she doesn't have to wipe his butt.

Love you lots,

Candy

--- On **Wed, 8/18/10, Anita Brunsting <*akbrunsting@suddenlink.net*>** wrote:

> From: Anita Brunsting <akbrunsting@suddenlink.net>
> Subject: RE: CPA's advice
> To: "'Candace Curtis'" <occurtis@sbcglobal.net>
> Date: Wednesday, August 18, 2010, 2:48 PM
>
> I agree w/ everything you said. I also like your e-mail to Drina - I hope it really pisses her off.
>
> ---
>
> **From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
> **Sent:** Wednesday, August 18, 2010 4:20 PM
> **To:** Amy Tschirhart; Anita; Carole Brunsting
> **Subject:** Re: CPA's advice
>
> Drina needs to get a grip. She's overwhelmed with what??? Advice??? We're all saying the same thing. That hole in the sand is just getting deeper. She needs to face reality right now. She should be overjoyed at any little progress from Carl. That joy should mutate into action to secure their future. Her nerves are raw because she refuses to face reality. The four of us have worked our entire lives. We're all single and have had to rebuild our lives and change our values in numerous ways. I don't know about you guys but there have been times when I just wanted to crawl into bed, curl up into fetal position, and sleep forever. If it's not one thing it's another. These times have only made me stronger. I have not been

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subjected to any calls from Drina trying to get money from Mother for medical bills. She needs to humble herself a little and tell the truth. I still would not have any sympathy for her, but it would make it easier for me to accept yours.

--- On **Wed, 8/18/10, Amy Tschirhart <at.home3@yahoo.com>** wrote:

> From: Amy Tschirhart <at.home3@yahoo.com>
> Subject: Re: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candy Curtis" <occurtis@sbcglobal.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Wednesday, August 18, 2010, 1:47 PM
>
> Hi,
> I just talked to Drina. She is tired of hearing advice (even if it is helpful and right). Basically she's just overwhelmed right now. Her nerves are raw and anything any of us say to her right now is just going to set her off. I suggest just leaving her alone for a little while. The bills aren't going to go away and she will eventually have to deal with them. She may be more receptive to listening then or she might figure out the solution on her own.
>
> Amy
>
> --- On **Wed, 8/18/10, Carole Brunsting <cbrunsting@sbcglobal.net>** wrote:
>
> > From: Carole Brunsting <cbrunsting@sbcglobal.net>
> > Subject: Re: CPA's advice
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candy Curtis" <occurtis@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> > Date: Wednesday, August 18, 2010, 1:36 PM
> >
> > That is exactly what the articles I sent last night said. Your credit score is only affected "IF" you stop making payments in the event you have a payment plan set up. Also, it said that she needs to negotiate discounted rates based on their financial statements and leave the trust out of it. Like Candy said, don't even mention the trust. From everything I have read, she can either get some of this written off OR get it discounted and set up a payment plan. If she and Carl cannot make ends meet in the future, then they consider a loan against his inheritance.
> >
> > I am finding that with GOOGLE, you don't really needs doctors or CPA's because all the diagnostic information is online along with accounting advice.

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07220150810:P0168

Knowing I am being petty with this statement, why is her father's advice correct and mother is not a straight shooter. Mother was shocked because she did not think the time was right to pay bills, but could not convey that message to Drina.

I grow tried of always being "wrong" in the eyes of Carl and Drina. Again, being petty but then I am just petty. So there.

--- On **Wed, 8/18/10, Amy Tschirhart <at.home3@yahoo.com>** wrote:

> From: Amy Tschirhart <at.home3@yahoo.com>
> Subject: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Candy Curtis" <occurtis@sbcglobal.net>
> Date: Wednesday, August 18, 2010, 2:57 PM
>
> Hi,
>
> I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the Internet and there are several in Houston.
>
> She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.
>
> I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.
>
> Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing ***any*** of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think

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07220155:0813:P0167

that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

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07/22/2015 08:50:16 GB

From: Amy Tschirhart
To: Candy Curtis
Subject: Info
Date: Friday, March 04, 2011 7:47:04 PM

Hi Candy,
I spoke with Anita about talking to Drina. She is going to work on getting me some numbers so I know what amount is available for Carl. We want to ask Drina to provide us with some documentation of their finances before we decide on what amount she could have on an annual basis. Could you help us make a list of what we need to ask her for?

I was doing some rough calculations. Carl is 53 right now. If he lives to be 85, that is 32 years. If he inherits $300,000, he could receive $1386 per month assuming that the account earned an average of 4% per year. That is no where near what Drina is expecting to get.

Call me if you have any questions or comments. Thanks.
Love, Amy

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From: Amy Tschirhart
To: Candy Curtis; Carole Brunsting
Subject: Number crunching
Date: Friday, March 04, 2011 8:06:02 PM

Hi Candy and Carole,
We are trying to determine the amount of money that Carl can withdraw from the trust. It's hard to determine this since there are so many variables - we don't know how much Mom is going to need for her care, we can't predict the future value of assets, etc. I did some rough number crunching, just so we'd have some place to start. I sent these numbers to Anita and I thought you might have some input about them as well.

If we assume that Carl inherits $300,000, he lives to be 85 (32 more years), and the account earns an average of 4% interest over the lifetime of the fund, Carl could withdraw $1386 per month and have enough money to last.

If it were possible for him to inherit $500,000, he could withdraw $2310 per month for the rest of his life.

Just to put things in perspective, to receive the $4000 per month that Drina says they need, he would have to inherit $865,600, which is not possible. I know if I try to explain this to Drina it will be like talking to a brick wall. It will never be possible to give her the amounts that she wants.

Amy

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07/22/2015 06:16:P01170

From: Amy Tschirhart
To: "Candace Curtis"; "Carole Brunsting"; Anita Brunsting
Subject: RE: New Development
Date: Tuesday, March 08, 2011 9:47:30 PM

I think we need to send two separate letters. One to Drina telling her she can't come in to Mom's house or contact her by phone or email, and the other to Carl regarding money from the trust. The letters deal with different issues and should be directed to the specific person.

I'm trying to think of some verbage for Carl's letter. This is all I have so far:
"If you would like to borrow money against your inheritance to pay for your living expenses and medical care, you may borrow up to $13,000 per year. To receive the funds, submit bills you would like paid from the trust funds to Anita. She will pay them up to the amount of $13,000 per year. Please sign the enclosed document indicating that you understand the amount you borrow will be deducted from any possible inheritance you may be awarded in the future."

--- On **Tue, 3/8/11, Anita Brunsting <*akbrunsting@suddenlink.net*>** wrote:

> From: Anita Brunsting <akbrunsting@suddenlink.net>
> Subject: RE: New Development
> To: "'Candace Curtis'" <occurtis@sbcglobal.net>, "'Amy'" <at.home3@yahoo.com>, "'Carole Brunsting'" <cbrunsting@sbcglobal.net>
> Date: Tuesday, March 8, 2011, 7:15 PM
>
> I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.
>
> I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.
>
> I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

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I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

From: Candace Curtis [mailto:occurtis@sbcglobal.net]
Sent: Tuesday, March 08, 2011 5:31 PM
To: Amy; Anita; Carole Brunsting
Subject: New Development

Hi All --

I'm sure you've heard by now about today's incident. I received a TM from Tino who said Carl and Drina went over to Mother's today and that I should call Robert, so I did. As we were talking he kept remembering things that had been said. I told him to write that stuff down because it was all important and all of us need to know what was said.

The time has come to deliver the news to Carl and Drina. Please put your heads together and quickly calculate what CARL would receive monthly for the next 30 years. Since you cannot be sure they receive the information if you email it, and you cannot reason with the moron on the phone, certified mail return receipt requested is the best way to send the information. Put in your correspondence that the first check will be sent on such-and-such date. You can offer to automatically put the $$$ into their account each month.

It's that simple. Once that is done we can all wash our hands of it and just wait and see how it plays out.

I know we would all like to have some visitation and/or phone privileges, but, frankly, the only condition should be that they have to stay away from Mother. I suspect she might actually run off when she realizes that she will have to make some major changes. She probably tells Carl that she WILL

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leave if he can't get his money, causing extreme duress and mental stress. The bitch told Mother that Carl worries about the money all of the time, day and night. I still don't think he has regained much cognitive reasoning, so whatever he worries about and says must come from her. We can continue to hope that one day Carl will recover some of his brain power. Maybe he'll wake up one morning and she'll say something hateful about his family and that will be it. Bye, Bye Drina.

I understand Mother has actually gone without her oxygen bottle attached for a couple of hours here and there. Robert said she was a little upset after the visit. This breaks my heart. She said something to Robert about never having children. It is unfair to Mother to even allow Drina in her home. If there's a next time Robert or Tino should make her wait in the car.

After you have written the letter to Carl (I wouldn't even put Drina's name on it), one, two, or all of you should meet at Mother's to show her the letter before Carl and Drina have a chance to start harassing her over the contents of the letter. It's really not an option for Carl to submit bills to be paid and Mother has spent enough of her own money on his care already. Just give him his monthly stipend and let them worry about how they are going to live within their means. It is what it is.

Call me with your thoughts.

Love you all,

C

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Exhibit 6

07222011 5:08:50 pm 74

From: Carole Brunsting
To: Candace Curtis
Subject: Re: APS
Date: Thursday, January 20, 2011 7:10:10 PM

Carl called Mother tonight, but you probably already know that.

--- On **Thu, 1/20/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: APS
> To: fvaquera@hotmail.com, r.cantu1970@gmail.com, "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Thursday, January 20, 2011, 10:38 AM
>
> All --
>
> I called Tuy at APS just now. I asked him to go to Carl's house and see with his own eyes that Carl is okay and not cowering in a corner with a dirty diaper. He was unaware that Carl had gone home last Friday, although I called him last Friday and told him. He keeps reiterating that he has talked with everyone and does not see any sign of medical neglect. I explained that another concern is that he is being abused in other ways, since no one has heard from him in almost a week. He has agreed to go to their house, although he would not give me a date certain. I'm going to call him again towards the middle of next week. If he has not gone over, and we still have not had any type of contact from Carl or Drina, I will escalate this to the next level and speak to Tuy's supervisor.
>
> Later,
>
> C

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07222015 08:40:15

From: Carole Brunsting
To: Amy; Anita; Candace Curtis
Subject: Re: Newest Developments
Date: Thursday, March 10, 2011 1:40:44 PM

After I get off work I am going to pick up Tino and go over to Carl's and see if I can get him out of there.

--- On **Thu, 3/10/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Newest Developments
> To: "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Thursday, March 10, 2011, 1:04 PM
>
> All --
>
> Please let me know if and when you want me to do something. I will call APS if you think it is appropriate. I guess we're all just waiting to see what happens. In some ways it might have been good to have the PI there when they leave the house to go to the doctor. If she's beating him and screeching at him all the way to the car, etc. we would have it on film to support our case. Maybe we can work this out to finally take over as Carl's guardian(s). Then, if she walks, we can get them divorced due to abandonment and she is out of the picture entirely. If he has enough brain function to call Mother a second time and ask for Marta's number, the light bulbs may be starting to come on in his head. My heart is breaking for him all over again.

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09/22/2015 08:15:20 76

From: Anita Brunsting
To: "Amy Tschirhart"
Cc: "Carole Brunsting"; "Candace Curtis"
Subject: RE: Attorneys
Date: Thursday, March 17, 2011 8:58:52 AM

Talked to Warren Cole's firm ; am waiting on a call back from Burgower and Bosker (the one Vacek gave me).

Cole's rates: initial consult: $750, hourly rate $500. He's been practicing for over 35 years. I talked to an associate and after I explained our situation, she said very confidently that he's seen everything and that this case would not be unusual to him. She even started rambling off some procedures that we'd probably have to start w/ - so I felt pretty good about this one - just don't know about the costs.

I've looked all of them up on the internet, Bosker's only been practicing a little over 10 years, and he's not board cert in anything, so not sure about him - though his firm is family law.

Burgower looks good; she's been practicing since 1985 - family law; teaches at South Texas College of Law ; but I'm waiting on a call back.

From: Amy Tschirhart [mailto:at.home3@yahoo.com]
Sent: Wednesday, March 16, 2011 4:24 PM
To: Anita Brunsting
Subject: Attorneys

Hi Anita,
Here are the two names my attorney gave me. Both are certified Family Law Specialists.
Warren Cole 713-275-4444
Wendy Burgower 713-529-3982

Ken suggested calling Warren first. Is Carol going to contact the attorney or do you want me to? If I do it, I need to know when Carol is available to meet with him. I also would like a list of question from everyone so I can cover all the bases. If you or Carol contacts the attorney, please tell them that Ken Brazle (pronounced Brazz-ul) referred us to him.
Thanks,
Amy

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17-20360.602

07220151308:PO1#7

From: Anita Brunsting
To: "Amy Tschirhart"; "Carole Brunsting"; "Candace Curtis"
Subject: more on attys and guardianship
Date: Thursday, March 17, 2011 2:13:29 PM

http://www.texasguardianship.org/guardianship.html

The link above is a good source of info if you haven't seen it yet.

I talked w/ Bret Bosker and he said we needed someone w/ experience in Probate Code, because Probate Court is where guardianship will be argued/decided. I gave him the 2 names of the attys Amy gave and he said they're both excellent (and expensive), but he said he was not sure as to their experience w/ guardianships/probate, but he said we could talked to them about that. He was also going to see if he could find me the name of an atty w/ direct probate experience. So it looks like we have to do 2 steps, 1st get guardianship and 2nd do the divorce if it comes to that. Unfortunately, if you read the website, the spouse is considered 1st in line for guardianship which is why it could be messy to sue for guardianship while they're still married. However, if she plans on divorcing him, then next of kin would be inline and that would be Marta - I think we could talk her out of it as she has expressed no interest in taking care of her father - so after Marta, it would be one of us.

I did tell him that everyone says getting guardianship is expensive, and I asked him "how much is considered expensive" $50,000 or a million? He said he couldn't answer that, but that the atty we went with should be able to give us an idea.

Still waiting to hear back from Cole and Burgower.

Anita

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EXHIBIT 09-27-2013 09:50:03 BY

From: Carole Brunsting
To: Anita Brunsting; Amy Tschirhart; Candace Curtis
Subject: Re: atty for guardianship
Date: Friday, March 18, 2011 11:58:47 AM

I think that Drina has always projected her own family issues onto ours. She was completely distanced from her own family until a year ago when her brother passed away and now she is talks about the relationship with her dad like they have been close forever which has not been the case.

She must have had some very bad things happen to her in her childhood and slowly but surely she twisted Carl's mind to go along with everything she did and said. I think you are right that this will have to play itself out to see what she does. She has been waiting for the day she and Carl get the "big" trust payout and then it will be see you later chumps!

--- On **Fri, 3/18/11, Candace Curtis *<occurtis@sbcglobal.net>*** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re: atty for guardianship
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> Date: Friday, March 18, 2011, 1:49 PM
>
> The Brunsting family has never been very demonstrative of their love for one another, but I chalk that up to being Dutch. What I cannot seem to wrap my arms around is the extreme coldness of Drina and Marta. They have always been limp when hugged and hugging is one of the best things in the world. One power hug and all my cares fly out the window. I believe it must be a genetic brain chemical imbalance in Drina's family. She has spent her life with Carl trying to distance HIM from his family and turn him into a cold fish like her. How did she ever get pregnant in the first place? Maybe we should try to get some DNA from Marta and Carl and do a paternity test. Wouldn't it be something if he wasn't her father??????????
> LOL
>
> Frankly, as long as the trust is safe, we should probably just let nature take its course and sooner or later we will get Carl out of their clutches and into ours. He might be pissed off for awhile, but I have some small faith that once he can reason better he will see that we only seek what is best for him in the long run BECAUSE WE LOVE HIM. Once he is able to reason and be reasoned with, and has regained some control of his life, if he chooses to go back to his moron wife and their moron spawn, I will mourn him as if he were dead. Until such time I will assume that, somehow, at some point in his recovery, he will realize how miserable the bitch has made his life. He might see that all she has ever cared about is money and how to avoid having to go out and earn some.
>
> If asked, Carl would probably say no to coming out here to live with us, even though it might be the very best thing for him. He should never feel like he has been "dumped" on anyone. I think he would have a lot more stimulation out here. He does love the Bay Area and after a short time he might gain some real incentive to

ADMITTED

02/22/2015 08:55:50 PM

get well.

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Fri, March 18, 2011 8:59:24 AM
Subject: atty for guardianship

Ok, I think I may have found an atty who could handle the guardianship issue. She was recommended to me by the Burgower firm that Amy's lawyer had given her - the Burgower firm does not do guardianship cases. This atty's name is Ellen Yarrell; her offices are in the Galleria area; she charges an initial consult fee of $350 for 1 hr of her time, and probably requires an retainer of $2000. Her paralegal (Elizabeth) said that she's handled cases like this before (where an impaired person has been divorced by their spouse). I asked about the expense and she said that Yarrell could give us a better idea after the consult and it depends on whether the guardianship would be contested (so that depends on whether we fight Drina now, or wait to see if she'll divorce him and then we're facing Marta (if she pursues it)). I got the feeling that "expensive" meant more like $50,000 not $1 million.

I thought of another plus on our side if Drina divorces him - Drina will probably expect him to come live w/ mother - so if he's w/ us and not his daughter that lends more credence to our side for guardianship (possession is 9/10's of the law?).

I also talked to mom last night and told her what was going on. I asked her if she was ok w/ using her money to pay for Carl's legal fees and of course she said yes.

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07/22/2015 05:05:50 PM

From: Carole Brunsting
To: Amy; Anita; Candace Curtis
Subject: Re: Mentis
Date: Wednesday, April 27, 2011 7:24:00 PM

Drina confirmed that Carl is supposed to be going there on May 11th or 12th. Shamika took him to the driving range yesterday and he hit a bucket of balls and seemed to enjoy it. Tino and I may take him golfing on Friday. Carl is still not sleeping more that a few hours each night so maybe this place can fix that for him.

--- On **Wed, 4/27/11, Candace Curtis <occurtis@sbcglobal.net>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Mentis
To: "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Wednesday, April 27, 2011, 1:14 PM

All --

I just finished reading the Mentis information on their website. WHAT A WONDERFUL PLACE. Reading about it brought tears to my eyes. This is the type of facility we have all been pushing for since Carl got out of TIRR. Carole, you even suggested that this is where TIRR recommended Carl go when he left there. If this is true, Drina did not and is NOT following orders. If that moron had hooked up with these people from the get go, she wouldn't be experiencing the meltdowns and Carl might be halfway to good as new. It would have saved the tremendous amount of money spent on caregivers. Once he is released from Mentis he most likely would be able to go home and live on his own, with or without the moron. He still has his family as support, despite all the water under the bridge today.

Please, please, please let me know if there is anything I can do to help get him in there. I will contact APS again if you can give me any new facts to report. If Carl could be evaluated by a real neuropsyche doctor and not the moron's own shrink, I believe the Mentis (or similar) recommendation would be reiterated and then, if she failed to follow doctor's orders AGAIN, we would have our evidence for APS.

Review of the previous APS fiasco leads me to believe that Drina was following doctor's orders of the doctors SHE chose for Carl - none of which were appropriate for his situation. He should have his own personal neurologist/psychiatrist who would have been seeing him regularly, in or out of a facility. With the moron sailing the ship Carl has been denied even basic medical care.

Amy and I talked about me kidnapping Carl and bringing him home with me. As silly as this sounds, it is still an option. I am sure there are equitable facilities here in California. The difficulty would be getting the insurance information out of the moron and keeping me out of prison. The moron is the one who should be in prison - seriously. If the homeless woman who used her friend's address to put her child in a good school gets 20 years in prison and a $1,000 fine, it will be a travesty of justice. I have no doubt this will happen, so how is it that the moron can get away with real

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07/22/2015 06:13:20 PM

crimes against her husband, that may ultimately cause his demise, and not have to answer for it in court?

C

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07/22/2015 05:45:20 PM 2

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Exhibit 7

07220155:08:13:PDT-83

From: Marta Brunsting <sweetpaige2083@yahoo.com>
To: Candace Curtis <ccurtis@erscorp.us>
Sent: Thu, January 13, 2011 3:01:30 PM
Subject: Re: Your Dad

Dad has seen several doctors the past couple months, including the Chief of Neurology and Chief of Rehab at St. Luke's hospital. The Chief of Rehab has written an order for him to attend outpatient therapy. Mom is following up on that now and he will go as soon as insurance approves it. He is gaining weight, sleeping better and his anti-depressant seems to be helping his outlook on things. He also has an appointment to see a psychiatrist that was recommended by both of the doctors at St. Luke's.

His condition is very complex and changes constantly. This has been the worst 6 months of our lives and we are mourning a living man who was our father and husband. He has improved, but this has been and continues to be a slow and very painful process.

There is no simple solution to this. He claims while at his stay at TIRR, (which is supposed to be one of the best rehab hospitals in the country), that he was abused by the night staff. Of course, they denied any mistreatment that and we had no actual proof. While at TIRR, he got hooked on prescription medications, didn't sleep at night and had hospital aquired infections one right after the other.

He will not be staying with your mother any longer. He is coming home and HIS FAMILY will figure out what next steps we need to take to get him better.

I find it hard to believe that any of you actually care about his welfare. All this family knows how to do is gossip, back-stab and conspire against one another. It is all completely sick and dysfuctional. Someone called Adult Protective Services on my mother and I don't doubt that it was one of your sisters. Anita called CPS on Amy years ago because she felt she was an unfit mother. If it were not for my dad telling Anita that she had made a terrible mistake, Amy might not have her kids. To my knowledge, Amy is not even aware of this.

You have not been down here for any of his recovery.

You have not spent endless hours with him in ICU and the hospital.

You have not witnessed the change in his mental & physical state as well as his personality.

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Exhibit 3 - 2012-12-13 - 3 pages

No one wants him back more than my mom and I.

I am not answering any more emails or phone calls. This is harassment.

--- On **Wed, 1/12/11, Candace Curtis** <*ccurtis@erscorp.us*> wrote:

From: Candace Curtis <ccurtis@erscorp.us>
Subject: Your Dad
To: sweetpaige2083@yahoo.com
Date: Wednesday, January 12, 2011, 5:25 PM

Dear Marta,Happy New Year! I hope you, Ryan and your beautiful daughter are doingwell. All of the California clan are looking forward to a great 2011.Being so far away from the situation with Carl has its advantages anddisadvantages. I only know what people tell me and what I can gather fromthe brief, infrequent, phone conversations I have with Carl. I am sick todeath by what I have been hearing since Carl was stricken with encephalitisMORE THAN 6 MONTHS AGO.My concern stems from the fact that Carl is not receiving the care andrehabilitation he needs to get his life back. He is floundering, literallyand figuratively, and NO ONE seems to have the time, energy, or wherewithalto make the next phase of rehabilitation happen. Carl cannot do it alone,even if he wants to, which apparently he doesn't. Consequently, he needs to be in a facility, RIGHT NOW. The longer he goes without aneuropsychological evaluation and proactive rehabilitation and therapy, theharder it will be for him to recover his brain function.I care very deeply about my only brother and find that I can no longer juststand by and wait for someone to move forward in getting him the help he sodesperately needs. Unfortunately, without a court order, my hands are tied.In my very narrow view, it appears that the rest of the family, includingyour Mother, cares only about money and how others live their lives.I WANT MY BROTHER BACK. I WANT YOU TO HAVE YOUR FATHER BACK. I WANT HALEYTO BE ABLE TO ENJOY HER GRANDPA. I WANT YOUR MOTHER TO HAVE HER HUSBANDBACK.I WANT YOU TO HELP ME MAKE IT HAPPEN. PLEASE.I know you are busy with work, home, and family. I've been there and donethat - twice. I'm only asking for your support in my efforts to get Carl ontrack to recovery. Carl's future and well-being is ALL that matters to meand I will do whatever it takes to get him back!XOXO,Aunt CandyCandace L. CurtisProject AdministratorERS Corp1600 Riviera Avenue, Suite 310Walnut Creek, CA 94596TEL: (925) 938-1600 x 100CELL: (925) 759-9020FAX: (925) 938-1610 ccurtis@erscorp.us

17-20360.610

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST

On July 24, 2015 an Order of this Court, signed by Judge Christine Butts on July 23, 2015, was filed in the above styled and numbered case. In this Order the Court stated that Greg Lester was appointed Temporary Administrator Pending Contest of this estate. The Court directed that Greg Lester will report to the Court regarding the merits of the claims in this case on or before the expiration of this Order. The Order will expire on or about January 20, 2016, which is 180 days after the date that the Order was signed.

BACKGROUND

The Brunsting Family

Nelva and Elmer Brunsting were married and had five (5) children: Candace Louise Curtis (" Candace"), Carol Ann Brunsting (" Carol"), Carl Henry Brunsting ("Carl"), Amy Ruth Tschirhart ("Amy") and Anita Kay Riley ("Anita").

The Brunsting Family Living Trust

Elmer Brunsting and Nelva Brunsting (herein referred to as "Settlors") created the Brunsting Family Living Trust (the "Trust") on October 10, 1996. The Trust was subsequently restated in its entirety on January 12, 2005. A copy of the Restatement of the Brunsting Family Living Trust ("Restatement") is attached hereto as the first exhibit.

The Trust could be amended during the lifetime of the original Settlors. However, once a Settlor dies, the Trust could not be amended except by court order.

Each Settlor could provide for a different disposition of their share of the Trust by executing a qualified beneficiary designation for that person's share alone.

Trustees of the Brunsting Family Living Trust

The initial trustees of the Trust were Elmer Brunsting and Nelva Brunsting. The Restatement provided that if both original Co-Trustees failed or ceased to serve, then Carl Henry Brunsting and Amy Ruth Tschirhart would serve as Co-Trustees.

Each original Trustee has the right to appoint successor trustees to serve in the event the original Trustee ceases to serve by death, disability, or for any reason, and may specify any conditions on the succession and service as may be permitted by law. The Restatement also provided that the original Trustees may each remove any trustee they have individually named as their respective successor.

On September 6, 2007, a First Amendment to the Restatement to the Brunsting Family Living Trust was executed by Settlors which changed the succession of successor trustees, a copy of which is attached hereto as the second exhibit. This document appointed Carl Henry Brunsting and Candace Louise Curtis as successor co-trustees if both original Trustees fail or cease to serve. If either Carl Henry Brunsting or Candace Louise Curtis should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then The Frost National Bank shall serve as the sole successor trustee. The First Amendment effectively removed Amy Ruth Tschirhart as the successor co-trustee and substituted Candace Louise Curtis in her place and stead.

Elmer Brunsting died on April 1, 2009, and after her husband's death, Nelva Brunsting served alone as the original trustee.

On December 21, 2010, Nelva Brunsting exercised her right to designate a successor trustee. Nelva Brunsting executed an Appointment of Successor Trustee, a copy of which is attached hereto as the third exhibit. The Appointment of Successor Trustee stated that if Nelva Brunsting resigned as Trustee, then Anita Kay Brunsting would serve as successor trustee, Amy Ruth Tschirhart would serve as the second successor, and The Frost National Bank as the third successor. If Nelva Brunsting fails or ceases to serve as trustee because of her death or disability, then Anita Kay Brunsting and Amy Ruth Tschirhart would serve as successor co-trustees.

On the same date, on December 21, 2010, Nelva Brunsting also exercised her right to resign as Trustee. Specifically, Nelva Brunsting resigned as Trustee of the Trust, the Nelva Brunsting Survivor's Trust and Elmer Brunsting's Decedent's Trust and appointed Anita Kay Brunsting as trustee of the aforementioned Trusts.

Split of Brunsting Family Living Trust into the Survivor's Trust and the Decedent's Trust

After Elmer Brunsting's death on April 1, 2009, the Trust split into two trusts—the Nelva Brunsting Survivor's Trust (the "Survivor's Trust") and the Elmer Brunsting Decedent's Trust

(the "Decedent's Trust"). Nelva Brunsting, as the original Trustee, served as Trustee over both the Survivor's and Decedent's Trusts.

There is no power of appointment related to the Trust which was exercised by Elmer Brunsting prior to his death on April 1, 2009.

Pursuant to the Restatement, the beneficiary of the Survivor's Trust, Nelva Brunsting, had an unlimited and unrestricted general power of appointment over the entire principal and any accrued but undistributed income of the Survivor's Trust. This general power of appointment was very broad, and granted the survivor the power to appoint the Survivor's Trust to anyone, outright or in trust, in equal or unequal proportions.

The Decedent's Trust would terminate at the surviving Settlor's death or on the death of Nelva Brunsting. Pursuant to the Restatement, the survivor had a limited testamentary power of appointment to appoint the undistributed principal and income to the descendants of the Settlors only. While Nelva Brunsting (as the surviving Settlor) was restricted to only appointing the assets to her descendants, the assets of the Decedent's Trust could be appointed by Nelva Brunsting (as the surviving Settlor) to her descendants in any proportion and on terms and conditions as the survivor elects.

Nelva Brunsting's June 15, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment

On June 15, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fourth exhibit. This document exercised Nelva Brunsting's general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust.

Specifically, Nelva Brunsting's exercise appointed the Survivor's Trust and Decedent's Trust to be distributed equally among Nelva and Elmer Brunsting's five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. This document also expressed Nelva Brunsting's intent that upon the death of Nelva Brunsting, any funds advanced to Nelva Brunsting's descendants would be deducted from that particular descendant's share of assets received from the Survivor's Trust and Decedent's Trust.

Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment

On August 25, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fifth exhibit. This document appears to have superseded the June 15,

2010 Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement.

In this document, Nelva Brunsting exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust. The document stated that the Trustee would pay the balance of both the Survivor's and Decedent's Trust equally to each of her five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley, and such assets would be held in a separate Personal Asset Trust for the benefit of each of her children. With the exception of Carl and Candace, each descendant would be the trustee of their own Personal Asset Trust. Specifically, Amy Ruth Tschirhart, Anita Kay Brunsting and Carol Ann Brunsting would each be the trustee of their own Personal Asset Trust. Anita Kay Riley and Amy Ruth Tschirhart were appointed the co-trustees of the Personal Asset Trust for Carl Henry Brunsting and the Personal Asset Trust for Candace Louise Curtis. The document also detailed the administrative provisions relating to the Personal Asset Trusts for Nelva and Elmer Brunsting's descendants.

The major change that resulted from the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement was that Carl Henry Brunsting and Candace Louis Curtis could not elect to be the individual trustee of their own Personal Asset Trusts. The August 25, 2010 document also provided different administrative provisions for the trusts created for the descendants than those provided under Article X of the Restatement.

Notably, the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement contained a no contest clause which provided a lengthy list of prohibited actions that would fall under such no contest clause. The no contest clause provided that any beneficiary who took such prohibited actions would forfeit their share and be treated as if they predeceased Nelva and Elmer Brunsting.

The Death of Nelva Brunsting

Nelva Brunsting died on November 11, 2011, and the Survivor's Trust and Decedent's Trust terminated and were to pass to the Personal Asset Trusts for Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. As detailed above, these Personal Asset Trusts were created pursuant to Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

CLAIMS

The Probate Court Claims Filed by Carl Henry Brunsting and Candace Louise Curtis

Carl Henry Brunsting and Candace Louise Curtis have filed claims against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting in the Estate of Nelva E. Brunsting, Deceased, pending in Harris County Probate Court Number Four (4) under Cause Number 412,249 (hereinafter referred to as the "Probate Court Claims").

Carl Henry Brunsting and Candace Louise Curtis' Probate Court Claims are twofold. First, individual tort claims have been asserted against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting for actions taken either in their fiduciary capacity or purported actions taken which have harmed Carl and Candace. The second category of Carl and Candace's Probate Court Claims relate to requests for declaratory relief in construing the Brunsting Family Living Trust.

The Probate Court Claims that include individual tort claims against Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting contain multiple questions of fact, which are within the province of the jury. Specifically, Carl Henry Brunsting asserted the following tort claims:

1. Breach of fiduciary duty
2. Conversion
3. Tortious interference with inheritance rights
4. Constructive Trust over Trust assets
5. Fraud, specifically, misrepresentation of facts to Decedent (it is questionable whether Carl and Candace have standing to pursue these claims)
6. Civil Conspiracy
7. Demand for accounting of the Trusts and non-probate accounts
8. Liability of Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting under Texas Property Code § 114.031
9. Removal of Trustees
10. Request for Receivership

The Probate Court Claims asserted by Candace Louise Curtis are as follows:

1. Breach of fiduciary duty
2. Fraud resulting from misrepresentation of material facts to Candace
3. Constructive fraud
4. Money had and received
5. Conversion
6. Tortious interference with inheritance rights
7. Unjust enrichment

8. Civil Conspiracy
9. Demand for accounting of the Trusts and non-probate accounts

As a result of the above Probate Court Claims containing questions of fact within the province of the jury, the Temporary Administrator has refrained from evaluating such claims.

The questions of law presented in both Carl Henry Brunsting and Candace Louise Curtis' requests for declaratory relief contained in the Probate Court Claims are as follows:

1. Was Nelva Brunsting's December 21, 2010 Resignation of Original Trustee and Appointment of Successor Trustee valid?

2. Were the June 15, 2010 and August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement an inappropriate alteration of the terms of the Trust?

3. Did the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement appoint all of the Trust property?

4. Did the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement revoke the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement?

5. Is the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement effective?

6. Do the pleadings filed by Carl and Candace violate the No Contest Clause and is the No Contest Clause void as against public policy?

Based on the powers granted to Nelva Brunsting in the Restatement, Nelva Brunsting appears to have appropriately exercised her right to resign as the original Trustee of the Trust on December 21, 2010, and appointed the successor trustee, Anita Kay Brunsting.

While the Restatement provided that the Trust could not be amended after the death of Nelva or Elmer Brunsting, this did not preclude Nelva Brunsting from exercising her general and limited power of appointments over the Survivor's Trust and Decedent's Trust. Specifically, it appears that Nelva Brunsting appropriately exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over Decedent's Trust by appointing the assets to her five (5) children in trust by and through the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The August 25, 2010 document appears to have superseded and replaced the June 15, 2010 Qualified Beneficiary

Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The Restatement granted Nelva Brunsting the power to appoint such assets in trust and place terms and conditions upon such assets as she desired, including her choice to designate trustees of the Personal Asset Trust of Carl Henry Brunsting and Candace Louise Curtis.

NO CONTEST CLAUSE PROVISIONS

Any claim by Carl Henry Brunsting and Candace Louise Curtis that Nelva Brunsting lacked capacity and/or was subject to undue influence when she executed the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement are questions of fact that are within the province of the jury. However, the no contest clauses in the Qualified Beneficiary Designation and in the Restatement must be considered.

Section "A." of "MISCELLANEOUS PROVISIONS" of the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement is a no contest clause that would disinherit any person who, among other things, makes the claims stated above. The provisions of this no contest clause include language that the no contest clause applies even if a court finds that the judicial proceedings in question originated in good faith and with probable cause. This Court will have to rule on the validity of this provision.

Article XI, Section C., of the Restatement is also a no contest provision. The provisions of this no contest clause are similar in result to those stated above in the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. Therefore, a successful claim that Nelva Brunsting lacked capacity would still be subject to the no contest provisions of the Restatement. In this event the Court would have to rule on the validity of this provision of the Restatement. In both documents the provision is well written.

A decision by the Court upholding either no contest provision might resolve all other issues.

The Lawsuit of Carl Henry Brunsting in the District Court Proceeding

Carl Henry Brunsting, in his capacity as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting, filed claims against Defendants Candace L. Kunz-Freed, Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively the "Defendants"). These claims of Carl Henry Brunsting were filed in the 164th District Court of Harris County, Texas (hereinafter referred to as the "District Court Claims").

Carl Henry Brunsting asserted the following District Court Claims against Defendants in his live pleading, Plaintiff's Third Amended Petition:

1. Negligence
2. Negligent misrepresentation
3. Breach of fiduciary duty
4. Aiding and abetting

5. Fraud
6. Conspiracy
7. Deceptive Trade Practices Act ("DTPA") violations

Carl Henry Brunsting also pled tolling, fraudulent concealment and the discovery rule. Carl Henry Brunsting sought damages of actual damages, forfeiture of fees, treble damages and punitive damages, in addition to his attorney's fees.

Carl Henry Brunsting's District Court Claims center around the changes Nelva Brunsting made by and through the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement and the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

In response to Plaintiff's District Court Claims, Defendants filed a Motion for Traditional and No–Evidence Summary Judgment on the following bases:

1. Carl Henry Brunsting improperly fractured his legal malpractice claims against Defendants;
2. Carl Henry Brunsting's DTPA claim is barred by the professional services exemption; and
3. Carl Henry Brunsting's negligent misrepresentation claim and DTPA claim fail because Carl Henry Brunsting admits he is not aware of any misrepresentations made by Defendants.

Defendants also moved for a No-Evidence Summary Judgment on the basis that Carl Henry Brunsting has no evidence supporting one or more of the elements on the claims he has asserted.

A Notice of Vacancy of Party and Motion to Abate Proceeding was filed by counsel for Carl Henry Brunsting. Carl Henry Brunsting has filed a resignation as executor of the aforementioned estates. Until a successor executor is appointed, there is no plaintiff to pursue the action against Defendants and no plaintiff to respond to Defendants' summary judgment motions. The issue of who will serve as the successor executor of the Estate of Nelva E. Brunsting and the Estate of Elmer Brunsting must be resolved prior to resolving the claims against Defendants.

A Motion to transfer the district court matter to the probate court where both estates are pending has also been filed, but not yet ruled upon.

DAMAGES

Actual damages, of course, are disputed. However, the actual distributions from the Trust after Nelva resigned until shortly after she died seemed to be reasonably well documented. Previously an independent investigation resulted in a listing of the payments made from the trust.

This **REPORT OF MASTER** that was prepared in the case filed in the Southern District of Texas federal court case has the details of the Trust's income, expenses and distributions of stock. A copy of this report is attached hereto as the sixth exhibit.

From this and from changes in the assets of the trust during the period in question the damages can be determined and are basically in three categories.

Transfers of Stock

2,765 shares of Exxon Mobil stock were transferred as follows:

1, 120	Amy
160	Anita
160	Candace
1, 325	Carol
TOTAL 2,765	

675 shares of Chevron stock were transferred as follows:

135	Anita
135	Amy's daughter
135	Amy's son
135	Anita's daughter
135	Anita's son
TOTAL 675	

It is easy to see that these distributions of stock were not evenly distributed to the five siblings. I have been told that the distributions were in fact early distributions of the recipients share from their future trusts. This could be resolved by giving those siblings that did not receive an equal amount at the time of the distributions an equivalent amount of money to settle the dispute. Of course the issue is further complicated by the fact that the value of the two stocks has changed since the time of the distributions. The proper way to determine the amount to be distributed might be to use the value of the stock on the date of the original distributions or the value on the date that money is paid to the damage sibling, whichever is greater.

Payments To/For Family

Approximately $108,000 were paid to or for the benefit of Amy, Anita and Carol or disputed expenses including approximately $41,000 of trustees' fees and approximately $36,000 of legal fees.

Payments To Carol for Nelva's Care

Approximately $160,000 was paid to Carol during the period in question. I was told that Carol was the primary sibling responsible for Nelva's care.

SUMMARY OF DAMAGES

It seems unwise to have made the stock distributions. However, this can be resolved by equalizing the distributions to all the siblings. The issue of trustees' fees can be resolved by comparing the fees to those that are considered as reasonable fees in similar circumstances. The legal fees are obviously justified and will surely increase. The amounts paid to Carol can be examined but should be liberally considered as attributed to Nelva's care and maintenance.

CONCLUSIONS

All of the legal actions taken by Nelva were within her authority under the broad provisions of the Restatement. Unless Nelva is found to have been incompetent at the time that her legal actions were taken all of the changes made in these documents apply in these proceedings.

If Nelva was incompetent at the time that she took these legal actions then a successor trustee would have been appointed under the terms of the Restatement. No claim of her being incompetent was made at that time.

Furthermore, if Nelva had been incompetent the plaintiff in the District Court case would likely have to show that the defendants knew that she was incompetent. For this and other reasons the case should be moved to the Probate Court.

There are damages for the unequal distribution of the shares of Exxon Mobil and Chevron stock. There may be damages for some of the expenditures for trustees' fees and for payments to Carol. These matters should be resolved by agreement. This may require mediation. The considerable legal fees involved in a trial far outweigh the expenses of a mediation and any compromises made by the parties at the mediation.

RECOMMENDATIONS

1. Remove the District Court case to the Probate Court. It is important that there not be different results for the same or similar issues that are in the cases currently in the Probate Court.
2. Require mediation. Point out the huge savings that will result from a mediation versus a trial. Possibly, inform the parties that the Court will rule on the no contest clause first if the matter is not settled in the mediation. Since this ruling could go either way both sides would have considerable incentive to settle. A ruling in favor of the no contest clause would essentially make the matters moot and the plaintiffs would take nothing and lose their inheritance.

DATA-ENTRY
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County Clerk
Harris County

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NO. 412.249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

NOTICE OF ORAL HEARING

UNOFFICIAL COPY

07/24/2015 15:34:57

PLEASE TAKE NOTICE that a hearing on Carl Henry Brunsting's Motion for Protective Order has been set in the above-referenced matter on August 3, 2015 at 11:00 a.m. in Harris County Probate Court Number Four (4).

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

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Attorneys for Drina Brunsting, attorney-in-fact for Carl Henry Brunsting

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 23rd day of July, 2015, as follows:

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
via Telecopier

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
via Telecopier

Stephen A. Mendel
Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
via Telecopier

Candace Curtis, *Pro Se*
218 Landana St.
American Canyon, California 94503
via Email

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

UNOFFICIAL COPY

NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

PLAINTIFF CURTIS' RESPONSE TO DEFENDANTS' NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE PURSUANT TO EVIDENCE CODES §§1002, 1003

TO THE HONORABLE PROBATE COURT:

Plaintiff Candace Louise Curtis (Curtis) brings her response to the No-Evidence Motion for Partial Summary Judgment filed jointly by Defendants Anita Brunsting and Amy Brunsting, and will respectfully show that more than a scintilla of evidence exists as to a genuine issue of material fact relating to the existence, authenticity, and validity of an instrument referred to as the 8/25/10 QBD, as hereinafter more fully appears.

TRUST CHRONOLOGY

In 1996 Elmer Brunsting and his wife Nelva Brunsting created The Brunsting Family Living Trust for their benefit and for the benefit of their 5 children (The Trust).

In 2005 Elmer and Nelva restated their trust, completely replacing the original 1996 trust (Restatement).

In 2007 the first and only Amendment to "The Trust" was signed by both Elmer and Nelva, and replaced Amy with Candace as successor co-trustee with Carl (Amendment).

Allegedly, an Appointment of Successor Trustees was executed July 1, 2008 appointing Anita as successor co-trustee with Carl. (7/1/08 AST)

The Brunsting Family Living Trust became irrevocable at the death of Elmer Brunsting on April 1, 2009, pursuant to Article III (B) of the Restatement, and could only be amended by a court of competent jurisdiction.

Upon the death of Elmer on April 1, 2009, The Elmer H. Brunsting Decedent's Trust (DT) was created as an irrevocable trust pursuant to Article III (B) and Article VII (A) of the Restatement, and could only be amended by a court of competent jurisdiction.

Also upon the death of Elmer on April 1, 2009, the Nelva E. Brunsting Survivor's Trust (ST) was created. The ST was revocable and amendable, pursuant to Article III Section (B) and Article VII Section (B)(1) of the Restatement.

On June 15, 2010, a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", was introduced (6/15/10 QBD).

On August 25, 2010, a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", was introduced (8/25/10 QBD).

Upon the death of Nelva, all of the aforementioned Trusts were to terminate, resulting in the creation of five equal (5) Personal Asset Trusts (PAT), one for each beneficiary.

OBJECTION NO. 1 ASSUMING FACTS - BEST EVIDENCE REQUIRED MOTION PURSUANT TO EVIDENCE CODES §§1002, 1003

There are legitimate questions regarding the existence and authenticity of the 8/25/2010 QBD instrument, as hereinafter more fully appears. Plaintiff Curtis objects to Defendants assuming facts not in evidence, and objects to Defendants' improper attempts at shifting the burden of bringing forth evidence onto Plaintiff(s).

Plaintiff Curtis further objects to the introduction of alleged copies and, therefore, pursuant to Evidence Code §§1002 & 1003, Plaintiff demands Defendants produce only the 8/25/2010 QBD actually signed by Nelva Brunsting, and herein moves the Court for an order that only the original instrument with the wet signed signature page be allowed in evidence on the following ground.

The Allegation of No-Evidence

Defendants' "Joint No-Evidence Motion for Partial Summary Judgment" alleges five (5) blanket no-evidence claims, without reference to a particular petition brought by a particular claimant. Defendants are clearly using the petition brought by Carl Brunsting as Executor of the Estate of Nelva Brunsting, and not the petition brought by Plaintiff Curtis, and do not distinguish although the petitions are plainly distinguishable. Defendants' no-evidence claims are:

1. Nelva's signature on the 8/25/10 QBD was forged.
2. Nelva lacked capacity when she executed the 8/25/10 QBD.
3. Nelva was unduly influenced into executing the 8/25/10 QBD.
4. Nelva was fraudulently induced into executing the 8/25/10 QBD.
5. Nelva executed the 8/25/10 QBD under duress.

Inherent in the first assertion is the notion that Nelva did not sign the 8/25/2010 instrument, while the subsequent assertions are based upon a presumption that Nelva Brunsting did sign the 8/25/2010 instrument, but that the signature was somehow obtained improperly.

Plaintiff Curtis has two pending petitions for declaratory judgement. Only one petition refers to the 8/25/2010 QBD, and it raises ground upon which the 8/25/2010 QBD fails that are not addressed in Defendants' joint motion and, thus, are beyond the scope of this response. However, based upon the five specific no evidence challenges presented, it necessarily follows that the rudimentary division in these 5 contentions is but twofold:

1. Nelva did not sign the 8/25/2010 instrument
2. Nelva signed the 8/25/2010 instrument

If one chooses to believe that Nelva did not sign the instrument, the questions begin with how did the likeness of Nelva's signature and Freed's signature and notary stamp find their way to these papers?[1] A plethora of further inquiries would necessarily follow.

If, on the other hand, one chooses to believe that Nelva did sign the instrument, the subdivisions of inquiry are again twofold:

1. Nelva signed the 8/25/2010 instrument knowledgeably and intentionally
2. Nelva signed the 8/25/2010 instrument, but did so under some form of duress, deception, mistake, or diminished capacity.

Defendants seek to shift the burden onto Plaintiff(s) to prematurely prove the secondary aspects related to the "assumed fact" that Nelva signed the instrument, while at the same time Defendants' motion is quick to say:

> *"There is no evidence that Anita and/or Amy were present when Nelva executed the 8/25/10 QBD."*

[1] The term "these" is plural and was purposely selected as will be shown.

There is also no evidence in the record that suggests Plaintiff Curtis or Plaintiff Brunsting were 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.

Did Nelva Sign the 8/25/2010 Instrument with Knowledge and Intent?

Defendants insist the 8/25/2010 QBD is valid, but admit they have no personal knowledge of its creation or execution, so what exactly do we know?

Emails attached to Plaintiff's federal petition and affidavit show Plaintiff telling Defendant Carole Brunsting she spoke to their Mother on the phone the day after the October 25, 2010 phone conference[2], and asked about this August 25, 2010 QBD and what it purports, and that Nelva insisted she did no such thing. Nelva followed that conversation with a hand written note regarding Amy and Anita's claims of being co-trustees for the Plaintiffs' Personal Asset Trusts saying "not true". (Exhibit A)[3]

Nelva's hand written notecard states:

> *"So I heard you were concerned that any money you receive after I 'leave this mortal coil' will be put in a trust and Anita would have to deal it out.*
>
> *This not true. You'll will get whatever share is yours. If you don't know how to manage money by now it's too late."*

Substantial Evidence is Already Before the Court

The Record clearly shows 3 distinctly different "true and correct copies" of the 8/25/2010 QBD, all bearing the likeness of a Nelva signature, a Candace Freed signature and the image of Freed's notary seal, but the three "true and correct copies" do not share the same image of Nelva's signature.

1. In Anita's 156 page objection filed December 5, 2014 the QBD appears at pdf pages 96 through 132 with signature page 37 at p132 bearing bates stamp P229. (Exhibit B_1)
2. In 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 bearing Bates stamp P192. (Exhibit B_2)

---

[2] Affidavit attached to Curtis original federal complaint Exhibit P-8 filed with this court 02102015:1527:P0074

[3] This exhibit was attached to the petition filed in the federal court on February 27, 2012 as Plaintiff Exhibit 16 made a part of the record of this court Feb. 9, 2015 at pages 66 & 67 in Document #BT-2015-45555

3. Curtis original federal court complaint, affidavit and exhibits were made a part of the probate court record on February 9, 2015. In the 601 page pdf document the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (QBD) appears at pdf pages 552 through 588 with signature page 37 at p588. (Exhibit B_3)

Plaintiff Curtis obtained Candace Freed's notary logs for August 25, 2010 (Exhibit C). These pages show a notary log book that does not conform to Tex. Gov't Code §406.014.

Based upon the obvious inability of the Defendants to agree as to what "version" of this mysterious 8/25/2010 QBD is the one "true and correct" version, and given that none of them claim personal knowledge of its creation or signing, and given that the notary logs are unusual and no certifiable copy of an "original" 8/25/2010 QBD has been introduced into evidence, certainly there are genuine questions raised as to a material fact regarding the instrument.

It would necessarily follow that questions surrounding the existence of the instrument would precede ancillary inquiries into the validity of the instrument's authenticity, precede questions addressing the improper purposes the instrument attempts to accomplish, precede inquiries into the opacities created from the instrument's attempted amalgamation of incompatible powers, and precede any discussion of the instrument's attempt to improperly merge incompatible trusts.

Defendants' Background Statement

Defendants' Motion seeks to mischaracterize the breach of fiduciary and conspiracy to steal the family inheritance suits as merely a "family dispute". These suits are more properly characterized under the civil law and the laws of equity as fiduciary relationship actions. The questions surrounding Defendants' actions would also seem to invoke Texas Penal Code considerations, and the fact that Plaintiffs and Defendants are siblings is a secondary premise, having no immediate evidentiary value.

Defendants' Motion relates the first background part as:

> *"Elmer and Nelva created the Brunsting Family Living Trust on or about October 10, 1996. The trust was restated on January 12, 2005 (the "Family Trust") Elmer and Nelva served as trustees of the Family Trust until 2008, when Elmer lost the ability to handle his financial affairs and Nelva served as trustee alone. In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees"*

Defendants are asking the Court to assume facts that are not in evidence and consistently skip from the 2005 restatement to some other place in time. In this instance they skip to the alleged July 1, 2008 appointment (Exhibit D), never once having mentioned the 2007 Amendment. (Exhibit E)

The July 1, 2008 Appointment of Successor Trustees

Defendants' Motion claims:

> *"This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions related to the 8/25/10 QBD".*

The disclosure CD received from the Defendants at the federal injunction hearing April 9, 2013 (more than a year after the federal suit was filed) contained Bates #'s BRUNSTING000001 - BRUNSTING 004922. Defendants claimed they had disclosed and accounted for everything, while Plaintiff continued to allege that known assets of the trust remained unaccounted for, and that true and correct copies of all trust documents in Defendants' possession had not yet been disclosed.

Normally 38 months would be more than ample time for litigants to exchange disclosures and discovery. Despite the fact that Anita's June 4, 2015 interrogatory replies claim it had already been disclosed, it was not until June 25, 2015, the day before Defendants' no-evidence motion was filed, that the Defendants finally responded to Plaintiff's continued requests for disclosure of the alleged 2008 appointment instrument. Defendants even rely on the instrument to assert at page 2 of their Motion:

> *"In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees."*

The claim that Nelva appointed Anita to serve as successor co-trustee with Carl in 2008 is a fact question in dispute, as under the terms of the 2005 Restatement Nelva held no such power. Nelva's power to remove trustees was limited to those she had individually selected. (See Article IV Page 4-2 (Bates P240) Attached as Exhibit F).

De jure, De facto, or Usurper?

In the 2007 Amendment Amy was removed as a successor co-trustee with Carl and replaced by Candace. If Carl or Candace failed to serve the alternate was to be Frost Bank.

Prior to making that change Nelva emailed Candace asking if she would be willing to serve as co-trustee with Carl stating that she thought Candace had a better relationship with her siblings. (Exhibit G)

The 2007 Amendment was the first and only amendment to the trust signed by both Elmer and Nelva Brunsting. After the incapacitation or death of one of the founders, the trust could only be amended by a court of competent jurisdiction. The July 1, 2008 instrument was only signed by Nelva, clearly indicates that Elmer was incompetent, and therefore is invalid.

The trustees for the irrevocable decedent's trust at the death of Elmer Brunsting would be those named by both Elmer and Nelva in the 2007 Amendment to the family Trust, and prior to Elmer's death there were no individual trustee appointments to be changed by Nelva alone.

This sound legal reasoning also applies to the invalidity of the alleged appointments dated August 25, 2010 and December 21, 2010, and the certificates of trust based thereon.

Defendants are not now and have never been de jure trustees for the irrevocable family or Decedent's Trust and defendant's motion disingenuously seeks to avoid any such deliberations.

Objection No. 2 Defendants' Motion is Disingenuous

Defendants improperly use their motion to advance irrelevant allegories. In Defendants' motion at page 3 they claim Plaintiff(s)' Petition(s) for Declaratory Judgment are ground in petty emotions:

> *"The chief change that prompted plaintiffs' challenge to the 8/25/10 QBD is that the co-trustees for Carl's and Candace's interest under the trust changed from: (1) Anita and Carl; to (2) Anita and Amy. Apparently, the change in co-trustees from Anita and Carl to Anita and Amy offends Carl and Candace"*

Defendants continue by contending that the focus of their Motion is very narrow and specific:

> *III. Argument & Authorities*
>
> *"This motion relates solely to plaintiffs challenges to the 8/25/10 QBD"*

Defendants make this claim while simultaneously using their Motion to advance a false thesis, to suggest false conclusions, to assume facts, to falsely claim honorable intentions, and to make numerous assertions about other matters already settled in plaintiff's favor or remaining in dispute, as if those matters were settled and established in defendant's favor.

Defendants' go on to downplay the significance of their Trojan horse as negligible:

> *"For plaintiffs, the sole impact is the change in co-trustees from: (1) Anita and Carl; to (2) Anita and Amy"*

The evidence will, in fact, show the alleged change was from Carl and Candace to Anita and Amy, that the alleged change was improper and that the intended impact on Plaintiff(s) is the one stated in Anita's December 5, 2014 "Response to Candace's Motion for Distribution of Trust Funds".

On page 1 at item 4 Anita says:

> *"4. If the Court finds the in terrorem clause is enforceable, then Candace and Carl have no right to any distribution from the trust".*

In recent interrogatories and requests for fiduciary disclosures returned by Amy Brunsting June 25, 2015, Curtis asks a series of questions regarding the fiduciaries' distribution standards. The questions were taken directly from the Northern Trust Company web site informational area. Defendant's response to the inquiry they renumbered as 15 is telling:

> *"15. What circumstances should or should not exist prior to a distribution from "the trust"?*
>
> *RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (i.e., before Nelva's death or after Nelva's death) and is, therefore, vague.*
>
> *Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution"*

Is it trustees burdened with the fiduciary duties of loyalty and utmost good faith owed to beneficiaries Carl and Candace who are making these claims, or is it conflicted co-beneficiaries who seek to stifle inquiry into illicit conduct? The answer should be obvious.

The manifest impact of this alleged successor trustee "change" is alterations to the trust that could not be done under terms of the trust; actions prohibited by law and by the trust that have been performed and acts required by the terms of the trust that have not been performed and the negative impact of this "change" on the trust has been absolute economic devastation.

Objection No. 3 Defendants' Motion is Vague and Productive Only of Confusion

Plaintiff Candace Louise Curtis objects to Defendants Amy and Anita Brunsting's Joint Motion for No-Evidence Partial Summary Judgment, on the ground that the Motion is vague and misleading.

Relevant to Defendants' Motion, two separate lawsuits were brought by two different plaintiffs, in two different courts, 14 months apart, with separate and distinct claims, notwithstanding the fact that both Plaintiffs' claims involve the same parties, acts and events, or that there are other related lawsuits involving additional defendants and claims.

Defendants' Motion makes numerous assertions while failing to distinguish between the plaintiffs, the lawsuits, or the pleadings, attempting to create some sort of egocentric mélange. This same amalgamation methodology of ambiguity is a fundamental defect of the 8/25/2010 QBD addressed in Curtis' Petition for Declaratory Judgment, but not mentioned in Defendants' Motion at all.

Plaintiffs are siblings not Siamese twins. The records and pleadings in one lawsuit cannot be juxtaposed as if they were the records and pleadings in the other. Using the term "plaintiffs" as a reference, without distinguishing the particular plaintiff, the particular case, or citing to the specific pleadings to which Defendants Amy and Anita Brunsting jointly refer, has created nothing but opacities.

The Proper Party, Case and Declaratory Judgment Distinctions

Plaintiff Carl Henry Brunsting filed suit against Amy, Anita and Carole Brunsting in the Harris County Probate Court, individually and as Executor for the estates of Nelva and Elmer Brunsting, seeking declaratory judgment and accounting, on the same day a hearing was held on Curtis' application for injunction in the federal court, April 9, 2013.

Plaintiff Candace Louise Curtis filed suit against Amy and Anita for breach of fiduciary, in the United States District Court for the Southern District of Texas on February 27, 2012, not raising any issues relating to the 8/25/10 QBD.

Plaintiff Curtis' pleadings in the federal court did not seek declaratory judgement until May 9, 2014, when she filed her first amended petition. Under the federal rules a plaintiff can only amend a complaint with leave of the Court, and only on an application showing the assent of opposing counsel, or a statement detailing efforts to obtain the assent of the parties and

expressing the reasons for plaintiff's inability to do so. This is all in the public record and Plaintiff Curtis would respectfully ask the Court to take Judicial Notice of the Federal Record.[4]

The amendment to Curtis' federal complaint was part of a stipulation approved by Defendants' counsel, as stated in the application for the Court's leave to amend. The stipulation involved a number of concessions and conditions exemplified by: 1) an application for leave to amend; 2) the Amended Complaint; and 3) Plaintiff's Motion for Remand to this Court.

The stipulation for remand involved amending the complaint to: 1) add necessary Party Carole Brunsting; 2) add involuntary Plaintiff Carl Brunsting, thus polluting the diversity required by 28 USC §1332; and 3) the addition of declaratory judgment claims. The remand also included keeping the federal injunction in full force and effect as a condition of the remand.

The petitions for declaratory judgment added by Curtis' first amended petition do not mirror the petitions for declaratory judgment brought by Carl Brunsting.

SUMMARY OF PLAINTIFF'S RESPONSE TO DEFENDANTS' NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants seek to trivialize several lawsuits involving conspiracy to steal the family inheritance, fraud, breach of fiduciary, co-mingling, self-dealing, and other secreted acts, as if such claims represent challenges to a single document and, more absurdly, a sibling rivalry motivated by petty emotions.

> *"Carl and Candace ("Plaintiffs") brought several proceedings alleging every conceivable means to challenge the 8/25/10 QBD"*

This statement of the record is a gross exaggeration. The 8/25/10 QBD is the object of two separate and distinct petitions for declaratory judgment, brought at dissimilar stages of separate proceedings by diverse plaintiffs.

The several lawsuits were by no means brought specifically to challenge the 8/25/10 QBD, as it is but a small piece in a much larger fraud mosaic.

[4] 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting et al Case remanded to Harris County Probate Court No. 4. Kenneth M. Hoyt, presiding, Date filed: 02/27/2012, Date terminated: 05/15/2014, Date of last filing: 05/15/2014

LEX NON COGIT AD IMPOSSIBILIA

The respondent is not required to marshal its proof and need only point out evidence that raises a genuine fact question on the challenged elements."[5]

The absence of a reliable instrument in evidence forecloses Defendants' no-evidence challenge as improperly seeking to shift the burden of bringing forth evidence onto Plaintiff(s), who cannot be called upon to prove the non-existence of the asserted fact of its existence.

Plaintiff has shown substantially more than the marginal amount of evidence required to defeat Defendants' Motion. The burden of bringing forth evidence to establish the existence and validity of an 8/25/2010 QBD rests squarely upon these Defendants, who are the only proponents of the existence, validity and applicability of the instrument.

CONCLUSION

If one of the three exhibits of the 8/25/2010 QBD is a true and correct copy of an original wet signed document, what are the other two exhibits true and correct copies of?

If Nelva knowingly and willfully executed the 8/25/2010 QBD, why does she say in regard to what it purports "this not true"?

Why does the content of Candace Freed's Notary Log not conform to the requirements of Tex. Gov't Code §406.014, and why does it contain such unusual line/page anomalies?

If the 8/25/2010 QBD is benign, and merely changes trustee appointments as Defendants claim, why do they cling to it so dearly despite admitting no personal knowledge of its creation or execution?

Unless and until such an instrument can be physically produced and qualified as evidence with declaration as to the full chain of custody, the inquiries into whether Nelva signed the instrument and under what conditions are as moot as discussions of the applicability of the alleged instrument's content.

Plaintiff Candace Louise Curtis herein affirms, under penalty of perjury pursuant to the laws of Texas that the foregoing statements are true and correct and based upon personal knowledge.

---

[5] TEX. R. CIV. P. 166a(i)

Furthermore, references to the record and the attached Exhibits are true and correct references and representations of the things to which they speak.

Plaintiff Candace Louise Curtis has herein presented sufficient evidence in response to Defendants' Motion for No-Evidence Partial Summary Judgment to raise a genuine issue of a material fact. The Court should properly deny Defendants' Motion for the numerous reasons shown, and Plaintiff so moves the Court.

Plaintiff seeks the above judicial remedy and prays for an order for Defendants to pay all costs associated with hearings on their Motion, including Plaintiff's transportation, lodging, meals and legal costs.

Respectfully submitted,

Candace Louise Curtis
Plaintiff *pro se*
218 Landana Street
American Canyon CA 94503
Tel: 925-759-9020
occurtis@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 13th day of July 2015, to the following via e-service or email:

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
brad@meddellawfirm.com

Attorney for Anita Kay Brunsting

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

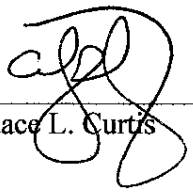
Attorney for Amy Ruth Brunsting

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
bayless@baylessstokes.com

Attorney for Drina Brunsting,
Attorney in Fact for Carl Henry Brunsting

Darlene Payne Smith
Crain, Caton & James
Five Houston Center
1401 McKinney, 17th Floor
Houston, Texas 77010
dsmith@craincaton.com

Attorney for Carole Ann Brunsting



Candace L. Curtis

NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

ORDER DENYING DEFENDANTS' JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT

Having considered Plaintiff Candace Louise Curtis' Response to Defendants' Joint No-Evidence Motion for Partial Summary Judgment the Court is of the opinion that plaintiff has met her burden and Defendants' No-Evidence Motion should properly be DENIED.

It is so ordered;

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

ORDER GRANTING PLAINTIFF'S MOTION TO PRODUCE EVIDENCE PURSUANT TO EVIDENCE CODE §§1002, 1003

Having considered Plaintiff Candace Louise Curtis' Motion and Demand to Produce Evidence pursuant to Evidence Code §§1002, 1003, the Court finds just cause to question the efficacy of copies of trust instruments and that the Plaintiff's Evidence Code Motion should be GRANTED.

Defendants will not be allowed to introduce copies of trust instruments alleged to have been signed by Nelva Brunsting after the death of Elmer Brunsting on April 1, 2009 except by stipulation between the parties or the approval of the Court and must produce only the original instruments.

It is so ordered;

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

ORDER DENYING DEFENDANTS' JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING PLAINTIFF'S MOTION AND DEMAND TO PRODUCE EVIDENCE PURSUANT TO EVIDENCE CODE §§1002, 1003

Having considered Plaintiff Candace Louise Curtis' Response to Defendants' No-Evidence Motion for Partial Summary Judgment and her Motion and Demand to Produce Evidence Pursuant to Evidence Code §§1002, 1003, the Court is of the opinion that plaintiff has met her burden and the Defendants' No-Evidence Motion should be DENIED.

The Court further finds just cause to question the efficacy of copies of trust instruments and that the Plaintiff's Evidence code §§1002, 1003 Motion should be GRANTED. Defendants will not be allowed to introduce any alleged copies of trust instruments alleged to have been signed by Nelva Brunsting after the death of Elmer Brunsting on April 1, 2009 and must produce only the original wet signed instruments.

It is so ordered;

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

EXHIBIT
A

Nelva Brunsting
13630 Pinerock Ln.
Houston, TX 77079

USA44

Candy Curtis,
1215 Virginia Way
Martinez, CA
94553

Wes: Sunday

Its almost 10pm but I'm not sleepy and my computer wont cooperate tonite.

So I heard you were concerned that any money you receive after I "leave this mortal coil" will be put in a trust and Greta would have to deal it out.

That not true. You will get whatever share is yours. If you don't know how to manage money by now its too late.

I'm on ok pain quite a bit of the time now. Even sleep with it. The hum of the motor is rather soothing.

Had about 30 on 20 teachers the evening. Time to take care of doing the goodies out.

Our weather is still gorgeous but so very dry. Glad I'm not a farmer. Iowa farmers are doing better.

I'm watching the Mavs series. Looks like your guys are winning.

Aren't those odds pretty? Could get them for me.

pen)

get a lap desk. I guess I'm too lazy to sit at the desk. I usually write while watching TV at nite.

Wish I had gave lovely handwriting. I started out left handed but my 1st gr. Teacher made me write right handed so I ~~[illegible]~~ blame her.

Hallmark
STATIONERY
CNT3025
© HALLMARK LICENSING, INC.
MADE IN U.S.A.
Hallmark.com

f. I can't even read myown writing.)

Bye now. Love, Mother

EXHIBIT
B

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

EXHIBIT
P-40_p37
USCA5 399

EXHIBIT C

VACEK & FREED, PLLC

ALBERT E. VACEK, JR.*
SUSAN S. VACEK
CANDACE L. KUNZ-FREED
PAUL J. BROWER
JULIE A. MATHIASON
BERNARD L. MATHEWS, III, *Of Counsel*
*Board Certified Estate Planning and Probate Law
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

(281) 531-5800
1-800-229-3002

Telefax (281) 531-5885
E-mail Address: consult@vacek.com

January 15, 2013

Mr. Rik Munson
218 Landana St.
American Canyon, CA 94503

Dear Mr. Munson:

Per your request, enclosed are copies of my notary pages for book entries dated August 25, 2010 and December 21, 2010. The additional pages you request for dates June 1, 2010 through April 15, 2012 total 24 pages. Please remit the exact fee of $12.00 for these additional pages, if you so request them. You will need to once again provide a self-addressed return envelope for these additional copies.

Finally, you will find a check for $8.00 payable to you for the return of the money order you previously submitted, less the cost of the four pages included herein. I am unable to hold these funds on account.

Sincerely,

Candace L. Kunz-Freed

Candace L. Kunz-Freed

CLF/sp
Enclosures

	Notarization Date/Time	Document Date	Type of Notarization	Name of Signer	Signer's Signature	Signer's Address and Telephone Number
161	11/22/10	11/22/10		Shelley Gates	X Shelley Gates	14311 Islandwoods Dr, Houston TX 77095
162	11/24/10	11/24/10		Floy Stockdick	X Floy Stockdick	6011 Franz Katy, TX 77493
163	11/24/10	11/24/10		Roseanne Lopez	X Roseanne Lopez	6005 Franz Katy, TX 77493
164	12/1/10	12/1/10		Dr. C.V. Beghtol	X CV Beghtol	11454 Valley Spring Houston TX 77043
165	12/9/10	12/9/10		M. Chan	X M Chan	21324 Rachelford Houston/Katy TX 77458
166	12/14/10	12/14/10		Irene Kovar	X Irene Kovar	
167	12/21/10	12/21/10		Nelva Brunsting	X Nelva E. Brunsting	13630 Pinerock Houston TX 77077
168	12/21/10	12/21/10		Anita Brunsting	X Anita Brunsting	203 Bloomingdale Cir Victoria, TX 77904
169	12/22/10	12/22/10		Herbert C. McKay	X Herbert C. McKay	8010 Naff St. Houston, Texas
170	12/29/10	12/29/10		Kyung Jacobs	Kyung Jacobs	8326 Ash Garden Ct. Houston, TX 77083
171	12/30/10	12/30/10		J.W. Burns	X J.W. Burns	10806 Inwood Hou. TX 77042
172	1/03/11	1/03/11		Kyung Jacobs	X Kyung Jacobs	8326 Ash Garden Ct. Houston, TX 77083
173	1/26/11	1/26/11		John Sutherland	X [illegible]	415 Coachman Lane Hou TX 77024
174	1/26/11	1/26/11		Ellen Sutherland Dodd	X Ellen Sutherland Dodd	Podere Binacco 58020 Scarlino (GR) Italy
175	1/26/11	1/26/11		Karen Lee Cook	X Karen Lee Cook	3210 Deer Trail Bryan TX 77807
176	2/9/11	2/9/11		M. Chan	X M Chan	21326 Rose Hollow Ln Katy TX 77450

Type of Identification (☐ D.L. ☐ I.D. Card ☐ Personally Known ☐ Credible Witness ☐ Passport ☐ Other)	Description of Document, Additional Information, or Comments	Fee	Signer's Right Thumbprint
Personal Knowledge	HIPAA → PAT TRUSTEES DESIGNATION OF SUCCESSOR TEE Certi. of Tr.	$ ~~0~~	Top of Thumbprint 161 / Top of Thumbprint 162
Personal Knowledge	Qualified Benef. Design.	$	
Personal Knowledge	Appt. of Succ Trustees Qualified Benef. Designation	$	Top of Thumbprint 163 / Top of Thumbprint 164
Personal Knowledge	Funding Pkg. COTS (ST) DT, LT (3) Med POA, HIPAA, QBD, APPT SUCC TEE GUDI'S and AFFIDAVIT.	$	
Personal Knowledge	Amended Affidavit/Cert.	$	Top of Thumbprint 165 / Top of Thumbprint 166
Personal Knowledge	Appt. of Succ Tee Resignation documents.	$	
Personal Knowledge	COT's (3) Acceptance as Succ Trustee	$	Top of Thumbprint 167 / Top of Thumbprint 168
Personal Knowledge		$	
Personal Knowledge	Beneficiary form for Chase IRA	$	Top of Thumbprint 169 / Top of Thumbprint 170
Personal Knowledge	Birth Certificate Correction	$	
P.K.		$	Top of Thumbprint 171 / Top of Thumbprint 172
Personal Knowledge	Farmers Insurance Claim Trustee Stmt for LT	$	
Personal Knowledge	Resignation of Tee Med POA	$	Top of Thumbprint 173 / Top of Thumbprint 174
Personal Knowledge	Accept of Succ Co Tee COT; Delegation of Auth	$	
Personal Knowledge	Accept of Succ Co Tee Accept of Delegation COT	$	Top of Thumbprint 175 / Top of Thumbprint 176
Personal Knowledge	Funding (PM2) Med POA; COT's (3) Deed HS, Deed other, Assign P/P.	$	

	Notarization Date/Time	Document Date	Type of Notarization	Name of Signer	Signer's Signature	Signer's Address and Telephone Number
129	7/20/10	7/20/10	in office	Robert Holmes	X Robert Holmes	13218 Verbena Houston TX 77083
130	7/23/10	7/23/10	in office	Nancy Kanistanaux	X Nancy G. Kanistanaux	1873 Birchwood Dr. Okemos, MI 48864
131	7/27/10	7/27/10		Carol L. Nayes	X Carol L. Nayes	5206 Summerfield Ln Spring, TX 77379
132	7/27/10	7/27/10		Karen Renee Nayes	X Karen Renee Nayes	13819 CADY COURT HOUSTON, TX 77077
133	7/27/10	7/27/10		Lisa Hanney	X Lisa Hanney	5706 Lone Cedar Kingwood, TX 77345
134	8/3/10	8/3/10	in office	Laurie Goodbold	X Laurie Goodbold	8148 Willow Forest Dr. Tomball TX 77375
135	8/10/10	8/10/10	" "	" "	Laurie Goodbold	" "
136	8/17/10	8/17/10		Irene R. Goddard	X Irene R. Goddard	1510 Breezy Bend Katy TX 77494
137				Fred Ben Himburg	Fred Ben Himburg	
138				Patricia Rhea Mullins	Patricia Rhea Mullins	
139				Suzan Faye Stringer	Suzan Faye Stringer	
140				Phyllis Himburg Delaro	Phyllis Himburg Delaro	
141	8/25/10			Nelva Brunstring	X Nelva E. Brunstring	13630 Piping Rock Houston TX 77079
142	8/26/10			Betty Jean Barney	X Betty Jean Barney	8915 Opelika Houston TX 77080
143	9/8/10			Mark R. Yarbrough	X Mark R. Yarbrough	4701 Monterey Oaks Blvd #1221 Austin Tx 78749
144	9/8/10			Jeffrey J. Yarbrough	X Jeffrey J. Yarbrough Jr	2617 Piping Rock Tr. Austin Tx 78748

Type of Identification (☐ D.L. ☐ I.D. Card ☐ Personally Known ☐ Credible Witness ☐ Passport ☐ Other)	Description of Document, Additional Information, or Comments	Fee	Signer's Right Thumbprint
Personal Knowledge	Merrill Lynch DT Merrill Lynch ST	$	129 Top of Thumbprint
		$	130 Top of Thumbprint
Personal Knowledge	COT for Noyes FLT	$	131 Top of Thumbprint
Personal Knowledge	COT for Noyes FLT	$	132 Top of Thumbprint
Personal Knowledge	COT for Noyes Family living trust	$	133 Top of Thumbprint
~~COTS(8)~~ Personal Knowledge	COTS(8) Funding Bks.	$	134 Top of Thumbprint
" "	Funding forms	$ —	135 Top of Thumbprint
Personal Knowledge	Funding Bk.	$	136 Top of Thumbprint
		$	137 Top of Thumbprint
		$	138 Top of Thumbprint
		$	139 Top of Thumbprint
		$	140 Top of Thumbprint
P.K.		$	141 Top of Thumbprint
Personal Knowledge	QBD, COTS(3) MEDPOA, DGPOA, APPT SUCC TEE DEED.	$	142 Top of Thumbprint
Personal Knowledge CC	SS4 COTS Aff of Heir Mtr. Vehicle (2)	$	143 Top of Thumbprint
Personal Knowledge	SS4 Aff. Heirship for Mtr. Veh (2)	$	144 Top of Thumbprint

EXHIBIT D

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

17-20360.654

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

17-20360.655

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other

BRUNSTING005807
17-20360.656

personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

17-20360.657

successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on July 1, 2008.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace L. Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

CERTIFICATE OF TRUST

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

CERTIFICATE OF TRUST
FOR THE
ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is 27-6453100. The Trust is irrevocable and no longer qualifies as a grantor trust.

   An acceptable abbreviation for account titling is as follows:

   NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

Candace Kunz Freed

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

17-20360.662

EXHIBIT
E

FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

Elmer H Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Candace L Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

17-20360.664

EXHIBIT "A"

Article IV

Our Trustees

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

17-20360.665

EXHIBIT
F

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

17-20360.667
P-327

EXHIBIT G

From: Nelva Brunsting
To: Candy Curtis
Date: Saturday, July 28, 2007 7:16:21 AM

Hi: I have a question for you Candy. Would you be willing to serve as co-trustee with Carl? Amy is on there now but I'm going to take her off because I don't think she is stable enough. I'll think of a good excuse so she won't get her feelings hurt. It might entail a trip or two when the time comes(doesn't that sound ominous???!!) but you would b paid for your traveling expenses. I think you have a better relationship with your siblings than she. Let me know.

TRIAL COURT NO. 412,249-401

IN THE MATTER OF THE ESTATE OF : THE PROBATE COURT OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, DECEASED : PROBATE COURT NO. 4

- * - * - * - * - * - * - * - * - * - * - * - * - * - * -

COURT REPORTER'S RECORD

MOTION FOR PROTECTIVE ORDER

VOLUME 1 OF 1 VOLUMES

- * - * - * - * - * - * - * - * - * - * - * - * - * - * -

MORNING SESSION

August 3, 2015

TRIAL COURT NO. 412,249-401

IN THE MATTER OF THE ESTATE OF : IN THE PROBATE COURT OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, DECEASED : PROBATE COURT NO. 4

- * - * - * - * - * - * - * - * - * - * - * - * - * - * -

BE IT REMEMBERED THAT UPON THIS, the 3rd day of August, 2015, the above entitled and numbered cause came on for Hearing on Carol Brunsting's Motion for Protective Order before the HONORABLE CHRISTINE BUTTS, Judge of Probate Court No. 4 of Harris County, Texas; and all parties appearing in person and/or by counsel, all preliminary matters having been disposed, and proceedings had, the following was heard, viz.:

APPEARANCES

COUNSEL FOR DRINA BRUNSTING, AS ATTORNEY IN FACT FOR CARL BRUNSTING:

Bobbie G. Bayless, Esq.
TBA #01940600
BAYLESS & STOKES
2931 Ferndale
Houston, TX 77098
713-822-2224
713-822-2218 FAX

COUNSEL FOR DEFENDANT, AMY BRUNSTING:

Neal Evan Spielman, Esq.
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GRIFFIN & MATTHEWS
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281-870-1647 FAX

COUNSEL FOR DEFENDANT, ANITA BRUNSTING-RILEY:

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COUNSEL FOR DEFENDANT, CAROLE BRUNSTING:

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713-658-2323
713-658-1921 FAX

REPORTED BY:

Judith J. Kulhanek, CSR #598
Deputy Official Court Reporter
Harris County Probate Court No. 4
P. O. Box 1633
Waller, TX 77484
(713) 681-6071
(713) 515-0221 (c)

MORNING SESSION

August 3, 2015

- * - * - * - * - * - * - * - * - * - * - * - * - * -

THE COURT: We are here in Cause No. 412,249-401, the Estate of Nelva E. Brunsting, Deceased.

We're here on Carl Henry Brunsting's motion for protective order. And present are -- my docket sheet says Neal Spielman for Amy Brunsting --

MR. SPIELMAN: Yes, Your Honor.

THE COURT: And Brad Featherston for Anita Brunsting-Riley.

MR. FEATHERSTON: Present, Your Honor.

THE COURT: And then Stephen Mendel --

MR. FEATHERSTON: He's with my firm, Your Honor.

THE COURT: Okay. I'm sorry. He is not present.

And Bobbie Bayless is here for Carl Brunsting and also for Drina Brunsting.

MS. BAYLESS: Yes, Your Honor.

THE COURT: Candace Curtis is pro se, and I don't see her in the courtroom.

And then --

MS. BEDUZE: Kathleen Beduze for Carole

Brunsting, Darlene Smith left.

THE COURT: Kathleen Beduze is here for beneficiary, Carole Brunsting who is here?

MS. BEDUZE: Correct. And we joined in the response.

THE COURT: Thank you.

MS. BEDUZE: We jointly filed that.

THE COURT: Okay.

MR. SPIELMAN: Response?

THE COURT: I haven't found -- we don't have a response.

MR. SPIELMAN: Well, that would probably be my problem, Judge.

My office filed it on Friday afternoon. At the very least, I have confirmation pages that it went to the attorneys.

THE COURT: Okay. Did Ms. Bayless -- did you receive a copy of the response?

MS. BAYLESS: I did. I didn't ever receive any notification it was filed, but I did receive a fax.

MR. SPIELMAN: I can step out while you guys get going and call my office and see if we have the confirmation.

THE COURT: Well, we can check if it

has been filed.

(SHORT DELAY IN PROCEEDINGS.)

MR. SPIELMAN: Judge, I don't know -- we have an envelope number, and I can tell you the envelope number was 6316359, and it was I guess put into the system, whatever the proper terminology is, at 4:08 p.m. on 7/31/15 which would be last Friday, and it says that it is submitted is the terminology there.

THE COURT: So --

MR. SPIELMAN: Yeah, but, I mean, I think hopefully the most important part for the purposes of our hearing, with all due respect to the Court, but the attorneys at least all have it. So nobody on this side of the Bench at least is surprised by it.

THE COURT: Okay. All right. Ms. Bayless?

MS. BAYLESS: Your Honor, we're here on a -- what my motion was termed a motion for protective order. It actually goes beyond the issues of pre-trial discovery.

And you will see from the defendant's response they kind of deal with it as just a typical motion for protective order involving pre-trial

discovery issues.

As to background, which is set forth in my motion, but basically is that back in 2012, the plaintiff didn't have very much information on what had occurred -- we did a pre-suit discovery action -- asked for recordings, both video and audio, got nothing.

The defendants in this case have gone through several counsel. They said they were going to produce everything, and that person was fired. I don't know what happened, I'm not sure. But since Mr. Spielman and Mr. Featherston have been in there, there have been several supplemental responses.

And then suddenly on July 1st, I get this envelope in the mail that had what is obviously recordings that my clients did not know about or consent to, and audio recordings obviously made while Carl was at his mother's home and had telephone conversations with his wife and video recordings from Carl's ICU hospital room.

I tried to communicate -- I don't think I had a conversation with anybody but Mr.Featherston in fairness -- but I tried to -- because he's the person who produced them. I called him up and tried to get an explanation from him for why these weren't

illegal recordings, and what we were going to do about that, and stressed that -- he I think sort of had the impression, well, Drina is mad about this. And I tried to explain to him this was a big deal to everyone concerned, including me.

We were going to continue to talk about it. He wanted to see the motion for protective order before he wanted to -- me to discuss any up front.

So I said, well -- we had -- at that time, we didn't yet have our third-party administrator and our temporary administrator, and so I just felt the need to get it on file.

Subsequently, what he did say to me in that conversation that is set forth in their response is that these came from an answering machine. I do not want to go into the substance of the conversations for the very reason that they are, in my view, illegal wiretap conversations, but they are not from an answering machine.

There is no answering machine answering these recordings. They are clearly edited in some instances because they stop in the middle of a sentence. There is no dating on -- other than looking at the property of the recordings that were sent to me, which in and of itself is interesting, because

these recordings occurred back in March of 2011. The video recordings occurred in May of 2011.

And so clearly were edited in February of this year. We were down here having hearings in February of this year about this temporary administration issue.

The other interesting thing is that I believe they were mailed to me on the same day that the defendants filed their no evidence motion for summary judgment suggesting that there had been plenty of time for discovery on that period since 2012, I think a total of 38 months, when these documents were sent to me the same day they filed that motion.

You know, under normal circumstances, that would be a long time for discovery. But it takes two to tango, as they say, and these documents had not been previously provided.

Now, when I talked to Mr. Featherston, I think Mr. Featherston called me, I guess Thursday, about an extension on discovery responses, requests for production, that are due today from the defendants.

And when I got these recordings -- just so you understand the background there -- when I got these recordings, I got them on July 1st in the mail,

then there's the July 4th holiday, I really didn't even look at what I got, frankly, until after that.

But I knew that there was a discovery deadline, and I knew there were recordings in there, so obviously, they -- I guess they would say they were responding to the pre-suit discovery which, frankly, I think is proper, but it should have been done back in the pre-suit discovery.

So I didn't want there to be a question about whether they were supposed to be providing things in this litigation. And we had a discovery cutoff at that time for, again, a docket control order, which required me to send out discovery responses that day before I really even knew what was going on.

And so here is what they were, but I knew I had to get those documents out or I would be hearing, well, you haven't even requested anything in this case, so that's why you didn't get them.

The obvious reason I got them is because they intended to use them in these proceedings, and they know they wouldn't be able to do that if they didn't provide them in some fashion.

So when Mr. Featherston talked -- we said we would talk again. He called me about an

extension on those requests because they didn't know what the Court would want to have happen, since I filed this motion for protective order indicating that I didn't want anybody else to receive these recordings.

And I gave Mr. Featherston, when we talked the first time, the cite from the civil wiretap statute and for the Penal Code provision. So they filed a response that says they don't know what the authority is for this, but we talked about that.

I told him that I was not inclined to agree to any kind of an extension on these things. And they've had them since March of 2011, and now we're getting dribbles.

And, by the way, during that same period of time, there would have been recordings, I understand, between Candace -- from Candace Curtis and her mother about all of these issues that are at issue in this. You know, those probably would not have had any more consent than the ones I'm here about. But the point is, they have been very selective about what they provided.

Clearly, the recording equipment was purchased by the caregiver. The receipt is in the production I believe attached to the motion, and he

got reimbursed. I mean, it is just so clear what was going on.

So Mr. Featherston and I talked, and he said that he wanted to put this -- the responses off two weeks so that the Court could make a determination on this.

I mean, recognizing that there could be some suggestion, there always seems to be a suggestion that I have not done something I'm supposed to do to make something happen, so -- or I have done something incorrectly procedurally, whatever.

So I sent an e-mail to all the counsel in the case, and said I don't want there to be any confusion that notwithstanding my request for production, that is a request that those items be produced to me and me only.

While normal practice may be that you send it to everybody in the case, these recordings are not to be sent to everybody in the case. And if you do it, I cite it again, the Penal Code Section, you do it at your own peril.

So I get a response on Friday afternoon from all the defendants, and their position now -- they still believe the answering machine-thing -- and their position is that Carl consented to these

conversations.

The Court will note that I attached to my motion for protective order e-mails of the same time period where these defendants are planning and plotting ways to obtain a guardianship over Carl, so there is no way that he consented.

And he was quite ill at the time and there is no question about that.

The recordings done in May of 2011, the video recordings, are in an ICU room at St. Luke's, and he was definitely in an altered mental state, because of medications he was receiving.

But you can't -- you can't say, okay, Carl -- they even say in their response that Carl hooked up this equipment.

Well, I mean, there is no way. I couldn't even hook up that equipment. It is digital equipment that requires menus and submenus to program. The model that the caregiver purchased -- as indicated on the receipt, I've got the manual for it here -- there is no way that a person that was needing a guardianship, as these people have admitted from their e-mails, would be able to do that.

And there is no -- the position in their response is this: We have to prove a negative,

that we have to prove there was not consent.

Well, if they say there is consent, that is an affirmative defense and the burden of proof is on them to show that. And in light of their own e-mails, I don't see how they are going to do that, but the burden is not on me to negate this stuff. The burden is on them to show that there was a consent.

So the other -- I mean, it always seems to go this way. I try to work these things out, and it's just the case where nothing gets worked out, and I think that's unfortunate for everyone.

But what I filed this morning, because they don't seem to understand that these statutes both say on their face that you're entitled to injunctive relief to prevent the further disclosure and use of these illegal recordings.

So they say in response they don't know what my authority is for this relief that I'm requesting. So I was not planning on filing it this morning, but I did file the third supplemental petition which alleges these causes of action and seeks the injunctive relief that those causes of action allow you.

And, you know, as usual, had we received all the information and disclosures in the

pre-suit discovery action, been able to deal with those issues and work those out, maybe we would have never been in this court. And maybe the lawyers in a district court would have never been sued if they had agreed to continue the tolling agreement until we worked this dispute out.

Nothing I suggest seems to work and -- maybe that's me. I'm not -- been called out at any direction other than I've been ineffective in resolving disputes in this case. And I have thought surely this was one in which, perhaps, Amy, Anita and Carole did not realize what they were doing. They are not lawyers. Maybe they didn't know you were not supposed to tape people's private conversations without their permission.

And that surely when the lawyers, even though they probably should not have even been given the information according to the stuff I read about it, that surely we would be able to resolve it.

Instead, I've now had to file a supplemental petition just in order to protect my client's rights on this incredibly offensive issue.

THE COURT: You also mention in the protective order the report from --

MS. BAYLESS: Yes, right. I mean,

there are e-mails. Again, I attached to the motion where they are talking about the -- what happened, both -- the reason we know much of anything is because Candy at one time thought everybody was trying to protect Carl.

When she figured out that was not what was happening, we suddenly got a boatload of e-mails which covered the gamut.

And her ex-husband -- I guess it's an ex-husband -- anyway, somebody she knows, had been asked for the name of an investigator. And she knew that a GPS tracking device without Drina's consent had been placed on her car.

There are e-mails in here talking about reports from the investigator. We have asked for that again since 2012. We have not received anything.

THE COURT: Do you claim that those reports still fall into the same category as the recording devices? In other words, were those reports obtained illegally with information at some stages of those reports?

MS. BAYLESS: It's really impossible to know without seeing the report, but I think they certainly contain information using the GPS tracking device.

THE COURT: Wouldn't you need for those reports to be produced in a motion to compel as opposed to a motion for protective order?

MS. BAYLESS: Yes. Again, this is part of why I did the new request for production in this case, because I felt if I filed a motion to compel, I would hear what she tried to compel. There has not been a request in this case. Even though since 2012, Anita has been acting to some extent under that initial request by supplementing these bank records, occasionally; and the tax returns, we've asked for them; stuff like that.

But, still, I didn't think I was in a position yet to seek a motion to compel, but the responses are due today.

THE COURT: Okay. Well, I think what we'll do is table the issue with regard to the investigator report. I just don't think that a decision on that with regard to a protective order is ripe yet. I don't think that -- we don't have what we don't so -- but on the recordings, I think that is a different story. So we'll address them, the recordings, today.

MS. BAYLESS: Okay.

THE COURT: Mr. Spielman or --

MR. FEATHERSTON: Briefly, Your Honor.

THE COURT: Okay.

MR. FEATHERSTON: When Bobbie called, I said what do you want? And really, at the end of the day, that's kind of how I am: What do you want?

And so the relief that she is seeking here I think are three things that we've outlined in our response.

The first one looks like it is some sworn testimony from all of our clients, from Anita, Amy and Carole. And to me, that is best accomplished by deposition.

Depositions haven't got off the ground yet in this particular case because it always seems like there is some procedural impairment, one or the other.

We have Greg Lester now, and it looks like now we're in a position where depositions can move forward. The impediment there might be whether or not Mr. Lester thinks the claims are even worthy of him sitting through depositions or participating in those depositions.

So that is kind of the first thing she is looking for, and that's why I have criticisms of what's -- you know, this is nothing like I have ever

seen in a motion for protective order.

A motion for protective order ordinarily is someone serves discovery, and the other party says, no, I find that discovery offensive, and so I need protection from the Court.

Here, someone may be served discovery, and the documents are being produced in the course of the litigation.

And so, that's kind of the point is under the Rules of Procedure when someone propounds discovery to me or if I think I have discovery that is responsive -- admittedly, Your Honor, I don't even pay attention to the people --I ask for it specifically or not. If I get stuff, I produce it. And, you know, I do that with good reason.

And so a long story short here, but when I produce it, I have to produce it under the Rules of Procedure. It has to go to all other counsel, and that's what I have done.

To the extent that there are -- so walking through what she wants, No. 1: These affidavits, I have never seen anywhere you can compel somebody to create an affidavit. That's something that should be done by deposition, and she will have a full and fair opportunity to depose these clients at

some point, and it should be sooner rather than later.

So that kind of takes care of the first issue of, you know, tell me what you want. Let's go from there.

The next issue I think that she's asking for is that all the recordings and everything be collected and given solely to her. And presumably, I can understand why she wants that.

These recordings, Your Honor -- and I don't think you have had the opportunity to hear them -- you can tell they come from an answering machine. "Hello, hello, hello." That's the type of recordings -- how these recordings start off.

And my understanding is that the decedent had her answering machine set to pick up at number -- on the second ring. And so these might have been recorded -- might have been caught by the answering machine to another recording device, and then on to someone's I-phone and then on to someone's computer and transferred like digital files often do, transferred from one component to the next, to the next, to the next, and on down the line.

But my understanding is that all of these come from an answering machine.

And so the relief that she's seeking

here is, I want you to record -- I want you to download all this evidence so you can give it solely to me, and I will be the sole arbiter of whether or not this is something that should be admissible or not. And that's just not the way it works.

I think the Court has to hear these recordings. And if the Court finds based on the recordings that, okay, these recordings appear like there is some huge conspiracy in some recording equipment where you illegally wiretap and all this other -- all these other allegations, then the Court is in a position to make that decision.

But without hearing the recordings or without developing the evidence, right now all we've got is allegations.

I don't have any affidavits from Drina saying I didn't consent to that recording. I didn't hear any answering machine when I called on that particular day. I don't have any affidavits from Carl whose capacity seems to come in and out, depending upon when it is convenient for them.

And I don't have any affidavits from Carl saying, no, you know, if we were going through a divorce at that time, but at that time, no, that's -- you know, I didn't consent to those recordings,

because it makes perfect sense.

I don't know if you've ever dealt with any divorce clients. They record the heck out of each other immediately when they are going through a divorce. That's typically what -- the first thing lawyers say is tape record your conversations with your soon-to-be ex.

And so I don't have any -- there is no evidence before the Court that Carl didn't consent. And this idea of, well, Carl didn't have capacity, she's berating him on several of these recordings claiming you've got capacity.

You're chewing on your shirt because that's what you've got; is that right?

MS. BAYLESS: Your Honor, I'm going to object to him going into the substance of these recordings. I mean, if the Court wants to do something to make a determination about their illegality, that's one thing; but he is disclosing, again, the contents of illegal recordings.

THE COURT: And I think that's defendants arguing at this point, so let's --

MR. FEATHERSTON: Fair enough, Your Honor.

Well, then, the issue ultimately turns

down to this: Who makes the decision regarding whether these are illegal recordings or not, Bobbie or the Court? And I think the Court is in a much better position than Bobbie is.

And so this idea of let's gather up all the recordings and give them to Bobbie, that doesn't work for me. Let's gather them up and submit them for in-camera inspections, that is fine. Doing an agreed protective order like -- and that's what I have proposed in the past is -- I could see if these are being posted on Facebook or posted on some blog or sent out there to the general public, but for purposes of this litigation and that's, to my knowledge, the only way these have been used, and that's the only way I have used them is disclosing them in this litigation.

If they want to do some agreed protective order -- I have done several of them in trade secret cases where you basically come in and it's like, look, you don't file this with the Court, you don't do a transcript and file it for public record. If it is these particular recordings that are going to be filed with the Court, that is okay. We can submit them for in-camera inspection. I'm okay with that.

Doing a joint agreed protective order where, look, guys, the stuff we're disclosing in this particular case, we all think it's privileged and confidential and we don't think it should be disclosed anywhere else, that's what I proposed.

We intended to attach it as to exhibits, but it wasn't. We have got several copies of that. But doing a joint agreed protective order in this particular case that says, look, what happens in the courtroom stays in the courtroom with respect to these things, and they're not going to be hearing our grievances or recordings or things anywhere else, I'm okay with that.

So -- but just giving them to Bobbie and, okay, saying how do clients react, I have never seen anyone even ask for that type of relief, and I don't think it is anything that is contemplated under any of these statutes. I certainly have not seen anything under any of these statutes that says that's the relief that she's entitled to.

I think there was one other thing that she was asking for other than that they all be -- oh, the last thing she is asking for is for you to make a ruling on the evidence. It's a rule that this evidence is inadmissible.

And so I don't think the Court is in any position as we sit here today with the lack of evidence actually before the Court to make an evidentiary ruling.

And so, you know, to me, I think we can get maybe two-thirds of the way here with just a -- with continuing discovery in this case and doing a joint agreed protective order that says we're not sending it out to the rest of the world.

But for purposes of this case, if you want to submit it to the Court, don't file it as a public record, submit it in-camera, things of that nature. Mark it "confidential". Have Bobbie -- if I produce something and she thinks it's confidential, mark it "confidential." Send that in the letter. We can create a running list. It makes much more sense than what's being asked for and the relief that's being asked for in this particular motion.

I've just never seen it before. I don't see any rules. I don't see any authority.

THE COURT: Well, I think that -- I think that that proposal makes a lot of sense to me. No. 1, requiring an affidavit, I think you would be better off proposing that because requiring the affidavit to me is awfully one-sided. I think that

the interaction would be beneficial for you and for, you know, the person being deposed or the affiant.

MS. BAYLESS: The key, Your Honor, is that there would be some type of sworn presentation to how this was done, when it was done, who did it, that kind of says all of it.

THE COURT: Well, I think the deposition would be better suited for that.

And then on the -- as far as the illegality of these recordings, I think that that has to be explored before you launch into collecting all of this and delivering it, because I'm not convinced that it is illegally obtained, and I'm not convinced either way.

I think that if you guys could hold the issue in abeyance until depositions can be taken and more evidences is gathered, and then perhaps we have a hearing or perhaps these recordings are submitted in-camera, I think that's a better way to go about this as opposed to, essentially, you know, ruling today that they are inadmissible, that they were illegally obtained, and then require the defendants to offer an affidavit. Because I think that the affidavit he receives, you know, may not satisfy, you know, what you're trying to do.

So I think that giving the deposition, we can dig a little deeper and you can get a little more clarification. So I like the idea of a joint agreed protective order.

MS. BAYLESS: Well, the problem is -- Judge, the problem is, I'm not comfortable consenting on my client's behalf or having my clients consent that these can be disclosed any further than they already have been.

I mean, I think if I'm right -- and I understand that the Court doesn't want to pre-determine that -- but if I'm right, there have already been problems in that they have been disclosed to other parties. And to say, oh, I agree that can keep going on while we sort through this --

THE COURT: No, I think -- I wouldn't envision that. I mean, I would envision that these recordings would be protected. I mean, that's why I imagine it would be called a joint agreed protective order, because it would protect that from further dissemination. Am I right?

MR. FEATHERSTON: I think the discrepancy -- and let me just connect the dots -- I think what she's saying is I can't produce it to Amy and Carole. And Carole can't produce items to Anita

and Amy. And so that's what I think Bobbie is really arguing for is she doesn't want us to be able to talk amongst ourselves -- or she doesn't want us to be able to exchange those among ourselves. She wants them to go solely to her and -- is that a fair statement?

MS. BAYLESS: Well, I think there are two kinds of recordings here. There are the recordings where that's already happened, and it is a little bit harder to put that horse back in the barn. And, frankly, they probably all have what they each have, but I don't know. And I don't want somebody to -- on down the road say, well, of course, we exchanged those things because you -- that was part of our agreed protective order.

So to the extent that's already been done and those recordings have been sent and these people have them, that is just something they are going to have to deal with.

To the extent there are other recordings -- and, see, this applies literally to the deposition. I don't know who has gotten what from whom at what time. And so to say, well, yeah, you know, spread those all around now. They will be saying, well, that was done during the protective order period and that kind of thing.

So that's why I'm saying if there are other recordings -- and I have asked for all of the recordings and the original media that they were recorded on so we can see what has been done without the editing -- then I'm saying those should not be disseminated even to the other parties in this case until this issue is addressed.

THE COURT: You know, I think I agree with that, and so I think that makes sense. So if the recordings have already been disseminated among the defendants, you know, before today, there is no way to, as you say, put that horse back in the barn. But in the future, until there is a determination as to the legality of those recordings, I don't think that they should be disseminated among the attorneys.

MR. FEATHERSTON: So, Your Honor, I guess the issue I have with that is how do I know?

THE COURT: Right.

MR. FEATHERSTON: I mean, basically, what your ruling is is now I'm in jeopardy for all recordings, because now like -- how do I say, you know, hey, Neal, do you have this recording or -- you know, that's where there is a disconnect.

There is no way for me to be able to -- because then when I disclose -- I mean, you're going

to find out whether or not someone has a recording. Have you heard this particular recording? I mean, that seems like a dangerous ground to me.

And so I think the ability to sit here and, you know, exchange within this group, I think that's okay. I mean, I don't know that any other lawyer is going to be out there disclosing anywhere else because the lawyers are subject to the joint protective order as well.

And so I don't see the harm while you're in litigation -- and there's a bunch of, you know, litigation privileges that are associated with it, I'd have to go back to my office and find some of them, but I'm sure I could -- I don't know how I could find out has this been disclosed on your side or not.

And it certainly puts us at a disadvantage. I mean, it just -- that doesn't seem like a workable solution.

Essentially, what your ruling would be is, any recordings you got, you need to, one, assume that they are illegal; and two, not produce them to anybody else. And I can't do that.

I mean, there is no showing that these are illegal. And if I feel like there is one that is illegal, then maybe at that point I will, you know,

tread more carefully.

But at this point, I think I need to be able to communicate effectively with the other defense counsel, as well as the plaintiff's counsel and the pro se plaintiff we have in this case, and produce those documents or risk, you know, not being able to use what the Court finds later that, oh, no, it's not illegal, these are okay.

Now, all the other defendants are at a disadvantage just because maybe my client keeps better records than theirs do.

THE COURT: Well, and that makes sense to me, you know, so --

MS. BAYLESS: Well, all he has to do, Your Honor, is not give them to anyone else. We know what he sent around to everybody else, and frankly, Ms. Curtis turned those copies over to me because she was not comfortable even having them.

THE COURT: But I guess what he is saying is going forward if he receives something, then he's not able to really supplement his discovery either.

MS. BAYLESS: Well, when are we really going to try this case? I mean, we don't even get -- the temporary administrator has six months to look at

it. I am not suggesting that he's going to miss a deadline or something if we deal with this issue.

And in the interim, he doesn't disseminate these recordings, whatever he may get, it would be fine with me. And if he doesn't, he can possibly not disseminate them to me, either. I mean, I have not had them for 38 months. I got them a month ago so, you know, that's not hard. I don't see that it is hard at all.

He's already sent around these. We know that he sent those around. If he is saying that he's been busily, since he got my motion, sending them to everybody that he could so that they would already be out there, then I guess we will have to sort that out.

But if it is a question of he is not supposed to give them to any other third parties until a determination is made about this, then I don't see what's hard about that, that isn't putting him at any kind of a disadvantage.

It is not suggesting what can or cannot be admitted in trial because we're not near a trial. We're not -- I mean, I know we have a docket control order, which no longer has much meaning or anything. We're supposed to be here today on a deadline on

summary judgment, so we are not.

So it seems like a simple matter to say, okay, I've got to put the brakes on anybody else receiving these recordings until we get to the bottom of the nature of the recordings.

MS. BEDUZE: Your Honor, I just want to make sure I'm understanding.

It is my understanding that these recordings have not been disseminated to any third party. They have been disseminated to counsel and -- but to these five individuals and their respective clients.

THE COURT: Right.

MS. BEDUZE: So any suggestion to otherwise, I would take issue with.

And we do not believe -- it would be very perfect for us to try to agree to a protective order that protects the dissemination of the recordings that have already been exchanged, produced, pursuant to part of discovery, and any additional recordings that may come to light that, you know, through the act of discovery.

And, I mean, in order to conduct the discovery, in order to take different depositions, which Ms. Bayless is wanting to take certain

depositions in lieu of the affidavit that she was originally requesting in front of you today, these recordings will need to be produced so that everyone can know and properly prepare for those depositions in which the recordings will be -- the information and the details of the recordings will be further delved into.

And so that end, my client, before retaining Crain, Caton & James, she did, in fact, give her deposition. And it is my understanding she responded as a pro se individual to over 300 production requests.

So the fact that discovery has not gone forward, and the fact that information has not been given freely, that's false with respect to my client, Carole, in that she has responded to that discovery, and we have supplemented when we have information.

But, again, Carole is only in this lawsuit as the beneficiary of the trust. She is not a trustee. And so, you know, it is the role of all the parties, no matter which side they're on, is to freely exchange information. And to hinder -- and I believe that stopping the recordings from being exchanged by all parties would hinder the ability to move forward -- to move this case forward.

I know they were down here two weeks ago, and I believe getting Mr. Lester appointed will further move this case forward. But in order to deal with things, we need to have a free exchange of information.

THE COURT: Okay. I have a meeting at 12:15, so I've got to get going. And I apologize, I should have said that earlier.

But let's work on an agreed protective order. I think it is difficult to restrain only the dissemination of these recordings among the attorneys.

And future recordings that have not already been disseminated, it might be a good idea for the attorneys just to have a hearing on it and get a determination whether or not it should be disseminated at that point. I don't know how many recordings there are, but --

MS. BAYLESS: I don't either.

THE COURT: What's that?

MS. BAYLESS: I don't know either.

Let me just say, Judge, I'm not going to enter into an agreed order that says those recordings can be disclosed to anyone. I just don't think I can do that.

THE COURT: Well, when you say third

parties, you're referring to anyone but the attorney who is in the suit as a legal attorney. I mean, third parties mean other than the defendants' attorneys and defendants?

MS. BAYLESS: Other defendants' attorneys in this case and other defendants, yes, that's what I mean. I don't mean other than those. I mean, those who are --

THE COURT: I'm just trying to clarify because Ms. Beduze said, you know, she took issue with the suggestion that these videos and recordings were being disseminated to third parties. I think that there was a missed communication about those third parties --

MS. BEDUZE: Correct. I will use the term "third parties" to be, you know, outside of the individuals involved in the lawsuit.

MS. BAYLESS: You know, I have absolutely no idea.

THE COURT: Well, let's work on a draft. Can we get the draft of a joint agreed protective order started, and see if you guys can come up with some sort of an agreement?

Otherwise, I mean, is there something I can rule on right now? I mean, is there something you

want guidance for other than this issue of how to deal with these recordings, because I don't have the answer to that. I don't know if there are even -- we could be displacing our findings cause all of the recordings have been produced, I don't know.

MS. BAYLESS: I think that's unlikely, Your Honor. But the problem -- here is the problem. While we explore these issues in depositions or however we explore them, if there is no constraint on their providing these documents -- of these recordings to other people, whether it is Carole sending her video recordings to Anita and Amy as she already did, and that's -- and so if Anita produced them, Carole didn't. She says Carole has provided all this discovery. Carole didn't provide those.

So unless there is some kind of constraint that there is to be no disclosure other than if -- other than Mr. Featherston talked about, he might be able to get a list of whom they have been provided to and when and that kind of thing. But without knowing, there may be -- the size of this recorder, there could be hundreds of hours of recordings.

And so without knowing what there is, without having the original means, without knowing any

of that, and until we know that, there is nothing preventing them from passing this around everywhere.

They obviously are not concerned about the statutes that prohibit it. And so unless this Court directs that those are not to go anywhere until we make a determination, and we establish a time period to make that determination, I just -- I cannot --

THE COURT: Okay. I think this is what -- this is my solution, I think, the best that we can come up with, sign a temporary order on it until an agreed protective order can be entered.

MS. BAYLESS: And the temporary order will --

THE COURT: It will expire at some point, and then we'll have a hearing when it expires, you know, the sooner the expiration date of the protective order or the date that a joint agreed protective order is entered. Does that make sense?

MS. BAYLESS: And the terms of this temporary order will be what?

THE COURT: I don't know that. I would have to go work on it. And then I'm assuming you guys can review and comment, and then I would enter it. And then, hopefully, you can come up with an agreed

order that would be better suited for the case. But until then, that's the only solution I can think of.

MR. SPIELMAN: Judge, if I may, I think whether it's in the temporary order or whether it's something that we can work on after that point, it can be maybe a stair step.

But I think what counsel has been saying about the need for the attorneys to be able to exchange so that, in theory, we can prepare our clients for, one, we can make sure that there are not any other recordings other than those that have already been exchanged. We need that part.

And then, two, I think what I heard a little bit of if -- if the concern is that, well, did Carl consent? Well, was Carl competent? That could be the second stage of people that need to hear these recordings.

I don't know how you determine his competency back then, but perhaps it is a professional who can hear the recordings and make some kind of determination.

I'm not saying that's the direction this goes, but it seems if the excuse -- if the defense is going to be that Carl was incompetent, and therefore, could not consent, we cannot have our hands

tied behind our back with regard to who can assist in either -- in evaluating that --

THE COURT: Okay. Well, that may be appropriate for the agreed protective order, so -- but as far as my temporary order is concerned, I'm not going to make it that complicated. So I don't -- I really don't know what I'm going to do at this point, but I'm going -- I will draft something up and you guys can comment on it. I don't want to mess things up for you, but I do think that it is appropriate to protect the dissemination of this information in the meantime so that we can get the issue resolved.

MS. BEDUZE: And, Your Honor, if you would -- I do believe we have a copy if you would like to see or hear the recordings that is --

THE COURT: Not yet.

I've got to go. I'm already late.

(CONCLUSION OF PROCEEDINGS.)

STATE OF TEXAS ::

COUNTY OF HARRIS ::

I, JUDITH J. KULHANEK, Deputy Official Court Reporter in and for Probate Court No. 4 of Harris County, Texas, do hereby certify that the foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested by counsel for the parties to be included in this volume of the Court Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Court Reporter's Record does not include any exhibits as none were offered and/or admitted.

I further certify that the cost for the preparation of this Court Reporter's Record is $ 260.00 , paid by plaintiff, CARL BRUNSTING.

WITNESS MY OFFICIAL HAND on this, the 18th day of August, 2015.

/s/ JUDITH J. KULHANEK
JUDITH J. KULHANEK, CSR #598
Deputy Official Court Reporter

MY COMMISSION EXPIRES:
DECEMBER 31, 2016

FILED
9/4/2015 2:49:39 PM
Stan Stanart
County Clerk
Harris County

DATA ENTRY
PICK UP THIS DATE

NO. 412,249

PROBATE COURT 4

ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

09082015 1:55:00019

NOTICE OF HEARING

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE BE NOTIFIED that the hearing on Greg Lester's, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP for the above entitled cause has been set for **Thursday, September 10, 2015**, at **2:00 p.m.** in the Probate Court Number Four (4) of Harris County, Texas:

Respectfully submitted,

MacINTYRE, McCULLOCH, STANFIELD & YOUNG, LLP

By: _____

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ATTORNEYS FOR GREG LESTER, TEMPORARY ADMINISTRATOR PENDING CONTEST

UNOFFICIAL COPY

09/02/15 15:55:50.7

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent by e-mail, e-serve, facsimile, and/or United States certified mail, return receipt requested, on this the 4th day of September, 2015, to the following parties:

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17-20360.713

NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

CANDACE LOUISE CURTIS' VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT

TO THE HONORABLE PROBATE COURT:

COMES NOW Candace Louise Curtis filing this Verified Motion for Partial Summary Judgment with Concurrent Petitions for Declaratory Judgment and in support thereof would respectfully show as follows:

I.

Summary and Declaratory Judgment Issues

This is a case involving numerous breaches of fiduciary duties by persons occupying the offices of trustee under questionable authority who, while exercising the powers of the office to perform improper transactions in a biased and self-serving manner, have affirmatively performed none of the duties required under the terms of the trust instruments, have affirmatively performed none of the duties required by Texas property statutes, and have affirmatively performed none of the duties required by the Texas common law.

Notwithstanding Defendants' selective disclosures over these past five years and their continuing obfuscation, there has been more than adequate time for both honest and complete fiduciary disclosures and for pretrial discovery. The requisite evidentiary support for these motions is contained within the Court's record. The evidence is clear, positive, uncontradicted, and of such nature it cannot rationally be disbelieved; there is no legitimate controversy as to any material fact; and Plaintiff is entitled to judgment as a matter of law on the issues expressly set out in this motion.

This motion for partial summary judgment seeks relief on four specific breaches of fiduciary duties at issue in the matters before the Court. Additionally, a de son tort claim and

petitions for declaratory judgments relate to the validity, efficacy and interpretation of instruments and the proper standing of parties.

The claims for breach of fiduciary relate only to the period of time between the death of our Mother Nelva Brunsting on November 11, 2011 and the filing of this motion. The several petitions for declaratory judgment relate to instruments authored after the incapacity and/or demise of Elmer Brunsting.

Plaintiff asks the Court to interpret the several claims for breach of fiduciary and the several petitions for declaratory judgment considering the totality of the circumstances in Toto with the records of the several proceedings.

II.

Summary Judgment

Pursuant to Texas Rule of Civil Procedure 166(a):

> *A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.*
>
> *The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response.*

In Branult v. Bigham, 493 S.W.2d 576 (Tex. App. -- Waco [10th Dist], 1973 the court held that:

> *A person interested as or through a . . . trustee . . . other fiduciary . . . or cestui que trust in the administration of a trust . . . may have a declaration of rights or legal relations in respect to the trust. . . i. to ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; ii. to direct the . . . trustees to do or abstain from doing any particular act in their fiduciary capacity; or iii. to determine any question arising in the administration of the trust . . . including the construction of . . . other writings.*

III.

Burden of Proof

The burden of proof is on the fiduciary to show that he has fully performed his duties, and the means for such proof is full disclosure and a sufficient and proper accounting.

> *Where facts lie peculiarly within the knowledge of a party and cannot, in the nature of the case, be known to his adversary, the party having knowledge has the burden of proving the facts. Spencer v. Petit, Tex. Civ. App., 17 S.W.2d 1102 @ 1106, (Affirmed, Tex. Com. App., 34 S.W.2d 798).*

In Frethey v. Durant, 48 N.Y.S. 839 (N.Y.A.D. 1 Dept. 1897), it was held that:

> *when a fiduciary relation is shown to exist, and property or property interests have been entrusted to an agent or trustee, the burden is thrown upon such agent entrusted to render an account, and to show that all his trust duties have been fully performed, and the manner in which they have been performed. It is assumed that the agent or trustee has means of knowing, and does know, what the principal or cestui que trust cannot know, and is bound to reveal the entire truth.*

IV.

Beneficiaries Have Express Statutory Standing to Seek Declaratory Judgments

Texas Civil Practice and Remedies Code §37.005:

> *Sec. 37.005. DECLARATIONS RELATING TO TRUST OR ESTATE*
>
> *A person interested as or through an executor or administrator, including an independent executor or administrator, a trustee, guardian, other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, mentally incapacitated person, or insolvent may have a declaration of rights or legal relations in respect to the trust or estate:*
>
> *(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;*
> *(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity;*
> *(3) to determine any question arising in the administration of the trust or estate, including questions of construction of wills and other writings; or*
> *(4) to determine rights or legal relations of an independent executor or independent administrator regarding fiduciary fees and the settling of accounts*

V.

Summary of the Motion

As the record will show, Defendants Anita and Amy Brunsting claim to be co-trustees for the entire Brunsting family of trusts. Anita claims to have become sole trustee for the entire Brunsting family of trusts via Nelva's resignation and trustee appointment on December 21, 2010. Plaintiffs Carl Brunsting and Candace Curtis are co-beneficiaries of the Brunsting family of trusts along with Defendants Amy, Anita, and Carole Brunsting. (see Exhibit 1 and Defendants' pleadings)

A fiduciary relationship exists as a matter of law. Amy and Anita owed and continue to owe fiduciary duties to Carl Brunsting and Candace Curtis. Anita and Amy have breached the fiduciary duties owed to all of the beneficiaries, and Plaintiffs have suffered and continue to suffer egregious injury and are entitled to remedy as a matter of law, as hereinafter more fully appears.

VI.

Breach of Fiduciary Claims

1. Abuse of Discretion: Failure to create individual trust shares or fund personal asset trusts
2. Duty of Competence: Failure to account for known trust assets - EE Bonds
3. Duty to Account: Failure to render full, true, complete, and timely accountings
4. Breach of affirmative fiduciary duty of full disclosure.

VII.

Summary of Petitions for Declaratory Judgments

Plaintiff seeks the following declaratory judgments as supported hereinafter.

That:

1. the July 1, 2008 appointment of successor co-trustees is invalid[1]
2. the August 25, 2010 appointment of successor co-trustees is invalid as to the Family and Decedent's irrevocable trusts[2]
3. the December 21, 2010 appointment of successor trustees is invalid as to the Family and Decedent's irrevocable trusts[3]
4. the December 21, 2010 resignation instrument is invalid as to the Family and Decedent's irrevocable trusts[4]

[1] Exhibit 11-a
[2] Exhibit 11-b
[3] Exhibit 11-d
[4] Exhibit 11-c

5. the 2005 restatement as amended in 2007 is the current law of the trust
6. Plaintiffs Carl Brunsting and Candace Curtis are the de jure trustees for the Family and Decedent's irrevocable trusts; and
7. Defendants Amy and Anita Brunsting are trustees de son tort, liable for any breaches of fiduciary committed by them while occupying the office of trustee for the Family and Decedent's irrevocable trusts; and
8. If Defendants cannot verify original appointment instruments before the Court Plaintiff asks for a declaratory judgment that Carl Brunsting and Candace Curtis are also the de jure trustees for the Nelva E. Brunsting Survivor's Trust.

VIII.

History of "The Trust" and the Significance of Trust Events

In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust[5] for their benefit and for the benefit of their 5 children (Original trust Exhibit 6).

That trust instrument named Founders Elmer and Nelva as the initial co-trustees, but in the event that both of them should cease to serve the successor trustee designation was listed:

a. First Anita
b. Second Carl and
c. Third Amy

The original trust lay dormant until January 2, 2005 when it was restated in its entirety (2005 Restatement Exhibit 7). The successor co-trustees after the 2005 Restatement were:

a. Carl Henry Brunsting and Amy Ruth Tschirhart[6]
b. Alternate Candace Louise Curtis

The significant fact is that Elmer and Nelva jointly removed Anita entirely as a successor trustee in 2005. It must be presumed that Elmer and Nelva had a reason for removing Anita.

The Brunsting Family Living Trust was amended by both Elmer and Nelva for the first and only time in 2007 (Exhibit 8), and after that amendment the named successor co-trustees were:

a. Carl Henry Brunsting and Candace Louise Curtis

[5] Bates Brunsting001517

[6] Bates P326 obtained by Blackburn

b. Alternate Frost Bank

The significant facts here are that Elmer and Nelva jointly removed Amy as a successor co-trustee and they did not put Anita or Carole on as an alternate, but instead named Frost Bank.

It is also significant to note that this was the last A/B trust instrument signed by both Elmer and Nelva Brunsting and is inarguably the current law of "the trusts".

TRUST VITIATIONS

Elmer Brunsting became incapacitated and was apparently declared by two doctors to be incompetent in June of 2008. Surfacing after more than three years of litigation and demands for production is a document referred to in other instruments as an appointment of successor trustees dated July 1, 2008.

July 1, 2008 Appointment of Successor Trustees

The only copy of this instrument thus far known, recently surfaced at pages 135-139 of a 143 page pdf document labeled "supplemental production" received from Anita Brunsting on June 25, 2015, a copy of which is attached as Exhibit 11-a.

The quality of this copy is not only unacceptable but the instrument is invalid on its face, as under Article IV Section D of the restatement Nelva could only remove trustees she had individually appointed.

2005 Restatement Article IV Section D

> *Section D. Resignation or Removal of Our Trustees. We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.*

Elmer had already been declared incompetent in June and was unable to sign trust amendments. His incompetence is mentioned in the July 1, 2008 instrument which was signed by Nelva alone. Because Elmer was incompetent and not deceased, there was no survivor's trust to change trustee appointments for, and since the successor co-trustees for the family trust had been selected by Elmer and Nelva jointly, the successor co-trustees for the family trust could not be changed by Nelva alone under the terms of Article IV (D) of the restatement.

Thus, when Elmer passed on April 1, 2009 the successor co-trustees for the irrevocable Family and Decedent's trusts could only be those named in the 2007 Amendment -- Carl and Candace, with Frost Bank as the alternate.

As Carl Brunsting was the first successor co-trustee in every instrument, nothing really changed after Elmer's death with the exception of the names of trust assets as to ownership interests. Assets were either transferred to a Decedent's Trust or a Survivor's Trust using various certificates of trust, but no individualized indentures for either trust were ever formally expressed. This is the first place where ambiguity finds fertile ground.

August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement

On July 3, 2010 Carl Brunsting fell ill with encephalitis. Candace Freed's notes dated July 30, 2010 reveal that her instructions to change the trustee designations and dispositive provisions of the trusts came from previously removed successor trustee Anita Brunsting and not client Nelva Brunsting at all. (Exhibit 12)

The note says Anita's instructions were to make her and previously removed successor co-trustee Amy Brunsting successor co-trustees, with Frost Bank as the alternate. The notes also say to put Carl's inheritance under Amy and Anita's control. What Anita had requested and Freed drew up is exactly what Elmer and Nelva Brunsting intended to prevent with the 2005 Restatement and the 2007 Amendment, which are the last A/B trust agreement instruments signed by both.

The instructions from Anita to Freed find their way into an instrument expressed as a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" allegedly signed by Nelva Brunsting on August 25, 2010. However, Plaintiff finds no exhibits in the disclosures that would indicate the source of the instructions to also place her inheritance expectancy under the trusteeship of Amy and Anita Brunsting. Nelva Brunsting herself said that's not true. (Exhibit 13)

Exhibit 10 is a collection of various Bates stamped exhibits of the alleged August 25, 2010 QBD. Of note is the fact that there are three versions of the signature page. Attached to Anita's 156 page objection to the Court's approval of a distribution, filed December 5, 2014, is the version bearing Bates Stamp P229. This is also the version Plaintiff Curtis received by mail. One can easily see the CAN preceding the alleged signature of Nelva Brunsting.

The next version bearing Bates stamps P192, P7168, V&F000389, P-76 and P12755 show both signatures floating way above the lines. This version appears in Carole's 133 page objection to Plaintiff's application for distribution filed Feb.17, 2015. This version also appears

in a business records affidavit from Frost Bank (Exhibit 9) as having been attached to an email received from Amy Brunsting in December 2011.

The third version (P443) was obtained for Carl Brunsting by attorney Blackburn from Anita. P443 and P1015 match the version attached to Curtis' original federal complaint (as Exhibit P-40), identified in her attached affidavit as having been received from Anita Brunsting via email October 23, 2010.

REMOVAL OF NELVA BRUNSTING BY FORCE

Nelva and Carl were excluded from a phone conference called by Candace Freed (Exhibit 5-a)[7] and held on 10/25/2010. After that conference Curtis had a phone conversation with Nelva regarding the alleged 8/25/2010 QBD. Carole later emailed Curtis about overhearing Nelva on the phone to Freed, telling Freed to change it back and that she wasn't going to follow the changes Freed had made to the trust (Exhibit 5-b). Subsequent to the phone conversation referred to in Carole's email, apparently Candace Freed requested that Nelva be evaluated for competency. Candace Freed later wrote a follow up email on November 17, 2010 explaining her reasons for subjecting Nelva to a competency evaluation. (Exhibit 14)

Defendant's, having failed in their attempt to have a very lucid Nelva Brunsting declared incompetent, and after disfiguring the Family, Decedent's, and Survivor's trusts with their 8/25/2010 QBD, still not being satisfied that the scheme to steal their siblings' inheritance expectancies was fool proof, Anita, Amy, Carole and Candace Freed converged on Nelva in her own home on December 21, 2010, leaving Nelva no place to retreat. (Exhibit 25)

Nelva is alleged to have voluntarily signed resignation papers prepared by Candace Freed that improperly gave Anita total control over the assets of the entire Brunsting family of trusts, but those changes could not be made under the law of the trust. Under Article III of the 2005 Restatement as lawfully amended in 2007, the family trust became irrevocable at the death of Elmer Brunsting April 1, 2009, but could also not be changed after Elmer's incompetency certification of June 2008, as it was an A/B trust requiring both Founders' agreement to effect any changes.

[7] Plaintiff Curtis original petition filed in the federal court on February 27, 2012 was made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

IX.

The Claims

Each of the following claims for breach of fiduciary relates to the period of time between the death of Nelva Brunsting and the filing of this motion. All of the Articles, exhibits and claims herein stated, and the attached Memorandum of Points and Authorities are hereby incorporated by reference as if restated in every other Article and Claim.

Claim 1. Abuse of Discretion: Failure to Create Individual Trust Shares or Fund Personal Asset Trusts

Article X of the 2005 Restatement of the family trust requires the trustees to distribute the trust res into five Trust Shares for the five beneficiaries, to be created upon the death of the second Founder. (Exhibit 7)

The 8/25/2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement that Defendant's cling to, but have not produced, requires the trustees to establish five personal asset trusts upon the death of the second Founder.

Nelva Brunsting, the second Founder, died November 11, 2011. It does not matter which instrument was to be followed, the trustees are in breach for failure to act and failure to seek judicial guidance in either circumstance, which is a clear case of abuse of discretion.

The injunctive order issued by the federal court April 9, 2013 not only enjoins Defendants from spending trust funds without prior court approval but, in fact, also compels Defendants to deposit income into an appropriate account for the beneficiary.

> *In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account.*

On June 25, 2015 Amy responded to Curtis' 1st interrogatories (Exhibit 22) and in her answers she blames Carl and Candace for bringing litigation as the cause for her inability to meet her fiduciary obligations.

Answering interrogatory 1 Amy states: (emphasis added)

> *The Personal Asset Trusts have not been established. <u>This is a result of the various lawsuits that have been filed by Carl and Candace</u>, as well as the injunction previously requested by Candace and Carl. If, as and when formed,*

> *they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees*

Amy further claims in interrogatory No.2:

> *Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.*

According to Anita Brunsting's June 4, 2015 answer No. 18 to Curtis' interrogatories regarding the irrevocable trust provisions for establishing personal asset trusts, Anita says Nelva "superseded" the irrevocable A/B trust agreement. (Exhibit 23) (Emphasis added)

> *18.Describe the steps you have taken to honor the provisions of Article X, Section B(1)(a)(i) of the Brunsting Family Trust?*
>
> *RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (i.e., before Nelva's death or after Nelva's death) and is, therefore, vague. The referenced section was superseded by Nelva and therefore, is inapplicable.*

In Amy's Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment[8], for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, Amy seeks to take refuge in the fact the personal asset trusts have not been "created" where she states:

> *AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property.*

In Anita Brunsting's June 4, 2015 answer to Curtis' 1st written interrogatories (Exhibit 23) in response to number 19, Anita blames "the litigation" for failure to fund the personal asset trusts: (Emphasis added)

> *19. Describe the steps you have taken to honor the provisions at Page 6 Item C of the August25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?*

[8] Filed with this Court 5/13/2013 BT-2013-154977

> *RESPONSE: After Nelva's death, defendant began the process of collecting assets, informing trust beneficiaries, and working the attorneys specifically referenced in such section to implement the terms of the trust instruments. The trustees and their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries.* ***Candace then brought litigation***.

The 2005 Restatement and the 2007 Amendment were the last A/B trust agreements signed by both Elmer and Nelva Brunsting. Limitations on the Founder's ability to amend or revoke "the trust" were provided in Article III Section B (Exhibit 7) which reads as follows: (*emphasis added*)

> *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***.

Thus, any instruments claiming to have amended the irrevocable Family trust after the incapacity of Elmer Brunsting and any instruments claiming to amend the irrevocable Decedent's trust after Elmer's death are invalid on their face, and those would include the proclaimed changes in successor co-trustees as hereinafter more fully appears.

Pursuant to Article X of the 2005 Restatement, which Nelva had no power to supersede, the trustees were to establish five trust shares for the five beneficiaries at the death of the surviving founder.[9]

> *Section A. Our Beneficiaries*
>
> *Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:*

Beneficiary	*Share*
CANDACE LOUISE CURTIS	*1/5*
CAROL ANN BRUNSTING	*1/5*
CARL HENRY BRUNSTING	*1/5*
AMY RUTH TSCHIRHART	*1/5*

[9] Exhibit 7 Article X page 10-1

There is no legal authority to support the notion that a suit brought by a beneficiary against a trustee for breach of fiduciary, or that animosity between the trustee and a beneficiary in any way relieves the trustee of performing the fiduciary duties the trustee owes to the beneficiary.

Nelva Brunsting died November 11, 2011. Article X of the 2005 restatement requires establishment of five trust shares at the death of the second Founder. The 8/25/2010 QBD requires distribution to 5 personal asset trusts at the death of the second Founder. Therefore, it matters not what instrument is relied upon, the trustees are in breach for failure to exercise discretion in either circumstance.

The federal Court found the trust required establishment of individual trust accounts and that the trustees had failed to fund the trust accounts. The injunction commands Defendants to deposit income into an appropriate account for the beneficiary and yet no income has been deposited appropriately into an account for any beneficiary. Defendants cannot blame the injunction for refusing to do what it commands!

There is no legal nexus between litigation and Defendants' proclaimed inability to act and no known legal authority exists to support such claims. Defendants have offered no valid defense as to why separate trust shares or personal asset trusts, have not been "set up", as Amy's March 6, 2012 affidavit claims. (Exhibit 1)

Defendants have offered no valid defense as to why separate trust shares have not been created, as required under the terms of the 2005 Restatement, or as to why personal asset trusts have not been "set up" as required under the terms of the 8/25/2010 QBD and as required under the terms of the federal injunction.

It should be judiciously noted here that the willful violation of a federal Court injunction is not merely a civil contempt but also a federal crime under Title 18.[10] If Defendants were uncertain what instruments to follow they had a constructive trustee duty to petition for judicial guidance, which they also failed to seek.

Claim 2. Duty of Competence: Failure to Account for, Protect and Maintain Trust Assets - EE Bonds

[10] 18 U.S.C. § 402 : US Code - Section 402: Contempt's constituting crimes

Defendants owe Plaintiff a duty to take possession of and protect trust assets. Defendants have known of the existence of U.S. Treasury EE Bonds held in the name of the family trust and have refused or otherwise failed to take possession, protect or account for the known EE Bonds.

Plaintiff Curtis sought an accounting for the EE Bonds in her initial complaint on February 27, 2012 (28 months after Anita claims to have become trustee). (Exhibit 5)

Fourteen months after Plaintiff Curtis' initial filing the federal Court issued an injunction to prevent wasting of the assets and a special Master was appointed to prepare an accounting of the income and disbursements of the trust from the date Anita Brunsting claims to have become sole trustee through May 31, 2013.

The Special Master appointed by the federal Court issued his report July 31, 2013 and the Defendants filed a response and an objection. On August 13, 2013 Curtis filed her response to Report of Master[11] and demanded at items 4 and 5 that Defendants account for U.S. Treasury EE Bonds held in the name of the trust.

A hearing was held September 3, 2013. While testifying the Special Master expressed questions as to the whereabouts of said bonds. (Exhibit 18)

Ten months later, still having no information about the EE Bonds, other than the Defendants' own production of April 2013, Plaintiff Curtis sent a letter of inquiry to the U.S. Treasury and subsequently received a response regarding the EE Bonds. (Exhibit 21)

December 14, 2014, Brad Featherston apparently emailed Plaintiff Curtis' prior counsel Jason Ostrom, and Carl Brunsting's counsel Bobbie Bayless asking for permission to "cash the bonds and deposit the money". (Exhibit 20)

Anita's June 4, 2015 answer to Curtis' interrogatories claims trustee failure to account for EE bonds is Plaintiffs' fault: (Exhibit 23) (Emphasis added)

> *23. What was the date of your prior inquiry and why was the inquiry made more than one year after you were noticed of the existence of those EE Bonds?*
>
> *RESPONSE: Candace and Carl consistently and repeatedly accused Carol of stealing bonds that were alleged to be in the name of Nelva or Elmer.* ***Defendant did not see a record of the bonds being in the name of the trusts****. In late 2014, Carol informed defendant that she could request a record of the outstanding bonds, which was done in mid to late 2014.*
>
> *24. What claim(s), if any, were you asking to be processed?*

[11] See Exhibit 17

RESPONSE: None.

25. Did you subsequently submit the properly completed forms? If no, why not? If yes, what were the results and where are the transaction records?

RESPONSE: No, because Candace would not agree to the disposition of the bonds and the legal fees to seek court approval to cash the bonds in light of Candace's failure to agree made the transaction cost prohibitive.

Defendants blame Carl and Candace for their refusal to account for the EE Bonds, but there is no legal nexus between alleged accusations that Carole stole the bonds and Defendants' fiduciary duty to account for the bonds. There is no legal authority to support the notion that a fiduciary's duty to account is somehow dependent upon a beneficiary's permission to cash bonds, and there is no rational connection between requesting the reissue of EE bonds and a beneficiary's permission to cash bonds. Defendants' posture is not a legal defense to failure to account.

Anita's response to Plaintiff Curtis' interrogatories claims that she did not know about EE bonds in the name of the trust[12] when 1) they are identified in Defendants' own disclosures[13] 2) Plaintiff Curtis specifically demanded Defendants account for the bonds in her August 13, 2013 Response to the Report of Master[14] 3) Plaintiff Curtis' original federal complaint mentions the EE bonds[15], and 4) the Special Master mentioned his curiosity as to the whereabouts of the unaccounted for EE bonds while testifying at the hearing on the Masters report September 3, 2013.[16]

The refusal to secure and preserve known trust assets by certifying authenticated copies of trust documents to the US Treasury in order to cause the reissue of the US Treasury EE series bonds is not a mistake, inadvertence or excusable neglect.

Claim 3. Breach of Fiduciary Duty to Account: Failure to Render Full, True, Complete, and Timely Accounting

Beginning with Anita's acceptance of the appointment of successor trustee, (Exhibit 11-e) when Nelva allegedly resigned on December 21, 2010, semi-annual accountings to Nelva were thus required on the summer and winter solstice, June 22nd and December 21st of each year.

[12] Exhibit 23
[13] Exhibit 19
[14] Exhibit 17
[15] See This Courts record 02102015:1527:P0082
[16] Exhibit 18

Amy Brunsting claims to have become a successor co-trustee with Anita when Nelva died on November 11, 2011. (Exhibit 1) (Amy Affidavit) No accounting was rendered December 21, 2011. Amy's Affidavit claims they have done the best that they can in the short time since Mother's death, but if accountings had been timely and properly prepared for Nelva by Anita, then it would have been a simple exercise to update them with the December bank and brokerage information. Current bank and brokerage statements continue to be withheld as of this writing.

The first quasi-accounting in the form of spreadsheets[17] was received on April 5, 2012 in response to a December 2011 demand for a statutory accounting. The only other accounting was performed by the Special master and no formal statutory accounting has ever been performed or submitted to all of the beneficiaries.

Based upon Defendants' previous reference to the federal injunction as "questionable" and having received inadequate "accounting" information, Plaintiff Curtis has again become profoundly concerned about the economic health of "the trust" and did send demand for statutory accounting June 15, 2015. (Exhibit 24) The statutory time has long since run and no accounting has been rendered.

Claim 4. Breach of Affirmative Fiduciary Duty of Full Disclosure

Defendants have no legal defense for their refusal to honor the affirmative fiduciary duty of full disclosure and transparency. As can easily be seen from Plaintiff Curtis' original federal complaint and Affidavit, the lawsuits were brought to compel the performance of fiduciary obligations, primarily those of accounting and disclosure.

At this late juncture Defendants' only defense to their abject failure to perform any fiduciary duties, is to assert that Carl and Candace are no longer beneficiaries because they brought litigation to compel fiduciary accounting and disclosures. This is yet another defense effort to remove loyalty and accountability, the very essence of the fiduciary relationship itself.

X.

Conclusion – The Emperor Wears No Clothes

Historiographically, we have obfuscation and subterfuge and what appears to be elder abuse; de-facto trustees assuming the office; troublesome disposition of trust assets; an absence of competent book keeping; failures to disclose and account; questionable documents; improper

[17] Exhibit 2

changes to irrevocable trusts; stalking; illegal wiretapping; and an absolute and complete absence of any fiduciary duties fulfilled without judicial compulsion.

Defendants cannot blame their failures to act on litigation brought to compel honoring of fiduciary obligations. The injunctions applied for and issued to prevent further misapplication of assets and to compel the honoring of fiduciary obligations, are not an excuse for failure to act.

Defendants have stated no valid legal defense and their excuses are nothing but confessions. Taken together, mere 'incompetence' cannot explain the synchronicity of events.

Defendants' pleadings and answers to interrogatories confess what their intentions have been all along. The plot was to steal Carl and Candace's inheritance expectancies and then to declare their victims "disinherited" should they object, just as Candace suspected in her email to Carole in October of 2010, and just as Defendants stated in their answers to Plaintiff's interrogatories and objections as exhibited herewith.

Anita, Amy and Carole kept their consorted acts secreted, refused to answer, and waited for Carl and Candace to seek judicial remedy to spring their disinheritance trap. In other words, the 8/25/2010 QBD was intended to eliminate accountability and the duty of loyalty, which no Court has ever even attempted, as that would dissolve the fiduciary relationship itself, an improper act, which is exactly what Defendants appear to have intended from the onset.

Defendants' plot was also clearly depicted in the Affidavit attached to Plaintiff Curtis' original federal complaint, filed February 27, 2012, now a part of this Court's record.[18] (Emphasis added)

> *I saw Carl and Drina for the first time since our Father's death, at our Mother's funeral. I did not know what to expect. Carl was talking to someone when Drina and I saw each other. In the blink of an eye we were hugging each other and crying. The deep wounds created by what had transpired over the last 16 months immediately began to heal. The bond between Carl, Drina and I was rekindled over the next few days. The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and I complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.*[19]

[18] Plaintiff Curtis original petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

[19] See Exhibit 13

Observe Amy's recent answers to interrogatories. (Exhibit 22 p.13 emphasis added)

> *(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?*[20]
>
> *Answer:*
>
> *"Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete subpart. It seeks to require the Respondent to interpret legal documents and render legal conclusions.* ***Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed****.*

Curtis' original federal complaint and affidavit contains email threads between Carole Brunsting and Candace Curtis in October of 2010, that make it clear Anita and Amy were both browbeating Nelva and not allowing her control over her own estate.

Note the reference to Amy and Anita's disinheritance plot at page 4 of 4 of the following email thread (Exhibit 5-d):

> *From: Candace Curtis <occurtis@sbcglobal.net> Subject;*
>
> *To: "Carole Brunsting" <cbrunsting@sbcglobal.net>*
>
> *Date: Monday, October 25, 2010,6:01 PM*
>
> *Now the truth comes out. None of us is entitled to copies of the trust documents, since Mother is the only beneficiary. Amy and Anita are trying to take over and will probably do anything and everything they can to cut the rest of us out. I was already depressed today. I'm over the edge now.*

The threat of using an in terrorem clause against Carl and Candace for bringing litigation to construe a trust instrument, direct the trustees to do or abstain from doing any particular act in their fiduciary capacity, determine any question arising in the administration of the trust, including the construction of writings, is apparently the only response Defendants can muster.

Such threats are inconsequential. A cestui que right to declaration as to the validity and interpretation of instruments and to compel the trustee to do or abstain from doing any particular act, is a statutory and common law right belonging to the cestui que that prevails over any terms of a trust to the contrary.[21]

---

[20] It should be noted here that this question was selected from the Northern Trust Company web site section advising the beneficiary on what questions to ask the trustee.

[21] Texas Property Code §115.001 vis-à-vis Property Code §111.0035; Branult v. Bigham, 493 S.W.2d 576; Texas Civil Practice and Remedies Code §37.005

The exercise of a cestui que right to hold the trustee accountable cannot be diminished, let alone perverted into violation of an in terrorem clause.

By claiming beneficiaries Carl and Candace are disinherited for violating an in terrorem clause, Defendants seek to remove Plaintiffs' standing to demand accountings, distributions, or disclosures, or to hold the impostor trustees to honor any of the fiduciary duties of the office.

It should be noted that disinheritance threats in Defendants' objections to distributions, and in their responses to interrogatories, were made in anticipation of the joint no-evidence motion for partial summary judgment subsequently filed by Defendants' Amy and Anita that they later removed from calendar. Defendants Anita and Amy Brunsting filed a joint motion in an effort to validate their 8/25/2010 QBD, collectively claiming personal knowledge of its validity. It should be noted that when confronted individually they have each disavowed any personal knowledge of its alleged signing.

Plaintiff would love to discuss the content of the 8/25/2010 QBD instrument and have tried every conceivable means to get the Defendants to qualify the thing as evidence so that we would have something to talk about, but has been continually frustrated in that effort.

Plaintiff Curtis' response to Defendants' no-evidence motion also included a counter motion under Texas Evidence Codes §§1002, 1003. That motion remains pending and is incorporated by reference, along with Carl Henry Brunsting's Motion for Partial Summary Judgment, as if fully restated herein.

The problem of the mysterious QBD would be resolved by the party claiming the existence of the QBD simply certifying the archetype of the instrument before the Court with a declaration as to the chain of custody. However, if Defendants could do that why would they not have certified trust instruments to the US Treasury to cause the reissue of the EE Bonds?

The eight Bates stamped copies (Exhibit 10) of the three 8/25/2010 QBD signature page versions connect all three Defendants with Candace Freed and that is no coincidence either. The fact that Nelva herself said in her own hand that it was not true (Exhibit 13) does not seem to affect Defendants' position of "we say Nelva instructed"[22]. Even if Defendants could produce the original and explain away the divergent copies of the original, it remains utterly worthless, collapsing under the weight of its own improprieties.

[22] Exhibits 22 & 23

Amy and Anita's answers to Curtis' interrogatories[23] claim the trust instruments speak plainly for themselves, but nowhere does one find Nelva's alleged power to "supersede" the irrevocable trusts, or the "Nelva instructed" provisions.

Anita Brunsting was removed as a successor trustee by both Elmer and Nelva Brunsting with the 2005 Restatement (Exhibit 7), and Amy Brunsting was removed as a successor co-trustee by both Elmer and Nelva Brunsting with the 2007 Amendment.

All three of Anita Brunsting's claims of returning to successor trustee status are colorable and none more colorable than the December 21, 2010 resignation and appointment documents, whereby Anita claims to have become trustee over all of the family trusts.

Nelva, individually, held no power to remove the trustees for the Decedent's or Family trusts and, thus, neither Anita nor Amy Brunsting ever returned to the status of a trustee after their removal by both Elmer and Nelva acting jointly.

In her own words Anita admits to browbeating Nelva and withholding trust information. Anita imposed her own will as if she were the new Founder, reminding Nelva Brunsting that she was no longer trustee and no longer had access to the trust. (Exhibit 5-e)

XI.

Prayers for Relief

For the reasons presented and supported by competent evidence within the record, Plaintiff prays that her several motions for partial summary judgment be granted, that Plaintiffs' petitions for declaratory judgment be answered, and that Plaintiff and the several trusts receive all other general, special, legal and equitable relief to which Plaintiff and the trusts may be entitled.

Plaintiff asks the Court for findings of fact and conclusions of law, order and ruling, that Defendants Amy and Anita Brunsting are de son tort Trustees liable for breaches of fiduciary obligations occurring after the demise of Nelva Brunsting including but not limited to those specifically enumerated herein:

1. Failure to Distribute Assets to Trust Shares or Fund Personal Asset Trusts or otherwise distribute the trust property interests amongst the beneficiaries (abuse of discretion)
2. Failure to account for known trust assets, to wit U.S. Treasury EE Bonds
3. Failure to render full, true, complete, and timely accounting

[23] (Exhibits 22, 23)

4. Breach of the ongoing duty of full disclosure

Plaintiff further asks the Court for findings of fact and conclusions of law along with declaratory judgment that:

1. The July 1, 2008 appointment of successor trustees is invalid;

2. The August 25, 2010 appointment of successor co-trustees is invalid as to the Family and Decedent's irrevocable trusts;

3. The December 21, 2010 resignation and appointment of successor trustees instruments are invalid as to the Family and Decedent's irrevocable trusts;

4. The 2005 restatement as amended in 2007 is the current law of the trust;

5. Plaintiffs Carl Brunsting and Candace Curtis are the de jure trustees for the Family and Decedent's irrevocable trusts; and

6. If Defendants cannot Verify original appointment instruments before the Court, Plaintiff asks for a declaration that Carl Brunsting and Candace Curtis be declared the de jure trustees for the Nelva E. Brunsting Survivor's Trust as well;

7. Defendants Amy and Anita Brunsting be compelled to specific performance in that they be ordered to verify the original trust instruments before the Court and submit certified copies to the United States Treasury for the reissue of U.S. Treasury EE Bonds;

8. Plaintiff asks that Defendants Amy and Anita Brunsting be removed from acting as trustees for the Family, Decedent's and Survivor's trusts, as appropriate;

9. Plaintiff asks that Carl Brunsting and Candace Curtis be declared de jure trustees as appropriate;

10. Plaintiff asks that Amy and Anita Brunsting be ordered to surrender all original trust documents, records of accounts, receipts and all other trust assets to de jure trustees Candace Curtis and Carl Brunsting forthwith; and

11. Plaintiff asks that Defendants are ordered to pay all costs for these motions and hearings and to award Plaintiff all other general, special, legal and equitable relief to which Plaintiff and/or the trusts may be entitled.

Plaintiff so moves this Honorable Court.

Respectfully submitted,

By: /s/ Candace L. Curtis

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

CALIFORNIA JURAT ATTACHED

NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

CANDACE LOUISE CURTIS' VERIFICATION

TO THE HONORABLE PROBATE COURT AND TO ALL PARTIES:

Candace Louise Curtis is a competent fact witness beyond the age of majority having personal knowledge of the matters before the Court and does bear witness under penalty of perjury by the attached California Jurat, and does solemnly swear that the facts presented in Plaintiff Curtis' Motion for Partial Summary Judgment and Concurrent Petitions for Declaratory Judgment are true and correct representations of the record before the Court and that the law presented to the Court in the Memorandum of Points and Authorities in Support of Plaintiff Curtis' Motion for Partial Summary Judgment with Concurrent Petitions for Declaratory Judgment represent the current condition of the relevant law.

Respectfully submitted,

By: /s/ Candace L. Curtis 1/25/2016

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of NAPA

Subscribed and sworn to (or affirmed) before me on this 25 day of JAN,

2016 by CANDACE LOUISE CURTIS,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Jyoti Nischal
Signature (Seal)

JYOTI NISCHAL
Commission # 2128966
Notary Public - California
Napa County
My Comm. Expires Oct 3, 2019

OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Signature Verification
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 1 Document Date 01/25/2016

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

2015 Version www.NotaryClasses.com 800-873-9865

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 26th day of January 2016, to the following via email:

Attorneys for Anita Kay Brunsting

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
brad@meddellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
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nspielman@grifmatlaw.com

Attorneys for Drina Brunsting as attorney-in-fact for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
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Houston, Texas 77098
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Attorneys for Carole Ann Brunsting

Darlene Payne Smith
Crain, Caton & James
Five Houston Center
1401 McKinney, 17th Floor
Houston, Texas 77010
dsmith@craincaton.com

/s/ Candace L. Curtis
CANDACE L. CURTIS

Exhibit 1

Affidavit filed in the federal court by Defendant Amy Brunsting March 6, 2012

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

CANDACE LOUISE CURTIS	§	
	§	
	§	CIVIL ACTION NO. H-12-CV-592
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING, and	§	
AMY RUTH BRUNSTING	§	
	§	
	§	

AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

Exhibit 2

April 5, 2012 spreadsheets A-J

ELMER BRUNSTING DECEDENT'S TRUST ASSET LIST				
OWNER	**ASSET CATEGORY**	**DEC 2010 VALUES**	**MARCH 2012 VALUES**	**MARCH 2012 COMMENTS**
	REAL PROPERTY			
	141 Acres, Iowa, Sioux County, (valued at estimated $10,000/acre per Rich Rikkers)	$ 1,410,000.00	$ 2,157,300.00	appraised value as of 2/7/2012, $15,300/acre
	SUBTOTAL	$ 1,410,000.00	$ 2,157,300.00	
	INVESTMENT ACCOUNTS			
	Edward Jones Acct: #653-13579;	$ 267,302.58	$ 250,048.26	as of 2/24/2012
	SUBTOTAL	$ 267,302.58	$ 250,048.26	
	DRIP ACCOUNTS			
	Chevron Acct# 125175509293; 595.4547 shares @ $106.78/share; tranferred to Anita Brunsting Trustee, 3/25/11	$ 63,582.65	$64,698.63	614.1303 Shares @ $ 105.35/share; value as of 3/22/2012
	Chevron Acct#: ELMERH--BRDT--0I00; 612 shares @ 106.78/share, 3/25/11; never transferred to Anita Brunsting as Trustee, remained as Nelva Brunsting Trustee	$ 65,349.36	$ 64,474.20	612 Shares @ $105.35/share; value as of 3/22/2012
	ExxonMobil Acct#C0009467769, Shares 1908 @ $82.73/share; value as of 3/24/11 when transferred to Anita Brunsting Trustee.	157,848.84	$ 50,394.52	583 Shares @ $86.44/share; value as of 3/16/2012
	SUBTOTAL	$ 286,780.85	$179,567.35	
	CASH ACCOUNTS			
	Bank of America Ckg acct#586027563536	$ -	$ 41,667.77	Established after mother's death. Includes deposit from farm rent profit bonus at end of 2011 of $13,902.51 and first half of 2012 rent of $26,437.50
	NOTES RECEIVABLE			

Schedule A

	$20,000 note from Candy Curtis dated 6/15/2010	$ (20,000.00)	$ (20,000.00)	
	SUBTOTAL	$ -	$ (20,000.00)	
	MISCELLANEOUS			
	Rental income from Iowa farm - mom deposited check in her personal checking acct as beneficiary of decedent's trust	$ (15,510.00)	$ 13,902.51	Bonus from profit on 2011 crops - deposited into decedent's trust checking acct 1/11/12
			$ 26,437.50	First half of 2012 rent - deposited into decedent's trust checking acct 3/5/12
	TOTAL	$ 1,964,083.43	$2,586,915.61	

NELVA BRUNSTING SURVIVOR'S TRUST ASSET LIST				
OWNER	**ASSET CATEGORY**	**DEC 2010 VALUES**	**MARCH 2012 VALUES**	**MARCH 2012 COMMENTS**
	REAL PROPERTY			
	HS-Lt 31 Blk 4 Wilchester West Sec 1, 13630 Pinerock Ln., Houston, Harris County, Texas (value on tax role)	$ 270,000.00	$ -	House Sold- CLOSING DATE 3/12/11
	SUBTOTAL	$ 270,000.00	$ -	
	INVESTMENT ACCOUNTS			
	Edward Jones Acct: #653-13555-1-6	$ 191,205.00	$ 1.05	
	SUBTOTAL	$ 191,205.00	$ 1.05	
	DRIP ACCOUNTS			
	Chevron Acct# 124921356678; 706.0888 shares @ $106.78/share; tranferred to Anita Brunsting Trustee, 3/25/11	$ 75,396.16	$19,012.88	172.4055 Shares @ $ 110.28/share; value as of 3/16/2012
	Deere & Co. Acct#806578316055 - as of 2/1/2011; 9.5807 shares @ $92.96/share; never transferred to my name as trustee	$ 890.62	$ 719.40	9.7125 Shares @ $74.07/share; value as of 11/2/2011
	ExxonMobil Acct#C0009467777, Shares 2101.968469 @ $82.73/share; value as of 3/24/11 when transferred to Anita Brunsting Trustee.	173,895.85	$ 72,256.12	835.910671 Shares @ $86.44/share; value as of 3/16/2012
	MetLife Acct#124921356678, Share 95.00 @ $45.05/share	$ 4,279.75	$ 3,685.05	95.00 Shares @ $38.79/share, value as of 3/19/2012
	SUBTOTAL	$ 254,462.38	$95,673.45	
	CASH ACCOUNTS			
	Bank of America Ckg acct#586027563523	$ -	$ 446,235.69	Established after mother's death. Includes deposit from proceeds of sale of house: $433,129.32
	Bank of America Ckg acct#0085190001143	$ 5,215.37	$ 1,471.75	
	Blue Bonnet Credit Union Sav? Acct#13332	$ 10.91	$ 10.91	
	Bank of America Ckg acct#586021229546 (joint acct w/ Carole set up to pay bills for and by Nelva Brunsting, value at start date 12/31/10	$ 25.00	$ -	

Schedule B

NELVA BRUNSTING SURVIVOR'S TRUST ASSET LIST

OWNER	ASSET CATEGORY	DEC 2010 VALUES	MARCH 2012 VALUES	MARCH 2012 COMMENTS
	SUBTOTAL	$ 5,251.28	$ 1,482.66	
	NOTES RECEIVABLE			
	Anita Brunsting, 160 Exxon Shares already removed from total shares above	$ -	$ 13,830.40	160 Shares @ $86.44/share, value as of 3/16/2012
	Anita Brunsting, 135 Chevron Shares already removed from total shares above	$ -	$ 14,887.80	135 Shares @ $110.28/share, value as of 3/16/2012
	SUBTOTAL	$ -	$ 28,718.20	
	MISCELLANEOUS			
	Household and Personal Goods	$ 5,000.00	$ -	
	Jewelry	$ 853.00	$ 853.00	
	Coins	$ 690.00	$ 690.00	
	2002 Buick LeSabre, VIN# 1G4HR54K3YU229418	$ 5,500.00	$ 5,500.00	title never transferred to trust
	SUBTOTAL	$ 12,043.00	$ 7,043.00	
	IRA/401K			
	Edward Jones, Acct# 609-91956-1-9, as of 1/1/2011	$ 54,367.51	$ 199.20	
	TOTAL	$ 787,329.17	$ 133,117.56	

BRUNSTING FAMILY IRREV TRUST - LIFE INSURANCE				
OWNER	**ASSET CATEGORY**	**DEC 2011 VALUES**	**MARCH 2012 VALUES**	**MARCH 2012 COMMENTS**
	CASH ACCOUNTS			
	Bank of America Acct#008519206643 - life insurance premium drawn from this acct.; as of 12/6/2011	$ 970.96	$ -	acct closed; remaining balance of $142.85 deposited into Survivor's Trust Checking on 3/8/3012
	Lincoln Financial Group	$ -	$ -	-balance 1/17/12;$250440.00 payout to each beneficiary of $50,088; - additional interest paid 1/31/12; $154.40; - remaining balance of $166.86 sent by check to Anita Brunsting Trustee in March 2012; deposited into Survivor's Trust Checking on 3/13/2012

FINAL	NELVA BRUNSTING SURVIVOR'S TRUST (ST) ASSET LIST		3/30/12
OWNER on 11/11/2011	**ASSET CATEGORY**		**11/11/11 VALUES unless indicated otherwise**
	REAL PROPERTY		
ST (Survivor's Trust)	HS-Lt 31 Blk 4 Wilchester West Sec 1, 13630 Pinerock Ln., Houston, Harris County, Texas (Value at right is what it went on the market for) Appraised value was $410,000.00; actual sale price is fair market value; (Value net after sale: $433,129.32)	✓	$ 469,000.00
	SUBTOTAL	$ 469,000.00	
	INVESTMENT ACCOUNTS		
ST	Edward Jones Acct #653-13555-1-6		$ 1.05
	SUBTOTAL	$ 1.05	
	DRIP ACCOUNTS		
ST	Chevron Acct #124921356678 36.8438 Shares @$107.0650/share value on date of death (basis)	✓	$ 3,944.68
LT (ST)	Deere & Co. Acct#806578316055 (Value at right reflects value on W's date of death) Basis: $75.35/share with 9.7125 shares owned as of 8/1/2011 Reinvested shares	✓	$ 731.84
ST	ExxonMobil Acct #C0009467777; Shares 671.987460 @$79.79/share on date of death and new basis)	✓	$ 53,617.88
ST	MetLife Acct #124921356678 95.00 shares @33.01/share basis	✓	$ 3,135.95

Key:
H - Husband
W - Wife
LT - Living Trust
SP - Separate Property
CP - Community Property
PRO - Probate
JT - Joint
ROS - Rights of Survivorship
JTROS - Joint with Rights of Survivorship

Schedule D

	SUBTOTAL	$ 61,430.35	
	CASH ACCOUNTS		
ST	Bank of America Ckg Acct #008519001143, accrued int of $.00	✓	$ 7,535.14
W	Blue Bonnet Credit Union Sav? Acct #13332, accrued int of $.00 (as of 2/29/12 stmt); Note: Bluebonnet Acct #5805 was a credit card acct	✓	$ 10.91
W or Carol ROS	Bank of America Acct# 586021229546 (account set up to pay bills for and by W); Value at right was closing value of the account	✓	$ 1,479.67
	SUBTOTAL	$ 9,025.72	
	MISCELLANEOUS		
ST	Household and Personal Goods	✓	$ 5,000.00
ST	Jewelry including Gold Watch and other Miscellaneous pieces (see attached itemized list); per Co-Tee based on similar assets	✓	$ 853.00
H & W JT	2000 Buick LeSabre, VIN #1G4HR54K3YU229418 (Value per Co-Trustee via email 11/27/2011)	✓	$ 5,500.00
W (ST)	IRS - Overpayment of Taxes for Tax Year 2010	✓	$ 6,215.87
ST	Miscellaneous Coins	✓	$ 690.00
	SUBTOTAL	$ 18,258.87	
	IRA/401K		
W	Edward Jones, Acct #609-91956-1-9, ? is bene (shows portfolio summary, value as of 12/31/2011)	✓	$ 245.52
	SUBTOTAL	$ 245.52	

Key:
H - Husband
W - Wife
LT - Living Trust
SP - Separate Property
CP - Community Property
PRO - Probate
JT - Joint
ROS - Rights of Survivorship
JTROS - Joint with Rights of Survivorship

GRAND TOTAL			$ 557,961.51

ILIT IRREVOCABLE TRUST OWNING LIFE INSURANCE

	LIFE INSURANCE		
Brunsting IRREV Trust	$250,000.00, ILIT, Policy #JP4432833, 5 kids are trust benes (claim has been made; actual payout as follows: $250,440.00 ($440 was death claim interest on the policy which is considered income to the trust earned after date of death)		$ 250,000.00
	Grand TOTAL IRREV TRUST ASSETS	$ 250,000.00	

ELMER BRUNSTING DECEDENT'S TRUST (DT) ASSET LIST			3/30/12
OWNER	**ASSET CATEGORY**		**11/11/11 VALUES of**
	REAL PROPERTY		
DT (Decedent's Trust)	143+ Acres, Iowa, Sioux County, Iowa (valued at $1,294,617.50 on H's Date of death); Value based on Appraisal at @$15,300/acre	✓	$ 2,190,000.00
	SUBTOTAL	$ 2,190,000.00	
	INVESTMENT ACCOUNTS		
DT	Edward Jones Acct #653-13579 (Value as of W's DOD at right. Basis was set as of H's DOD); confirmed acct number through Doug Williams' office	✓	$ 236,588.20
	SUBTOTAL	$ 236,588.20	

Key:
H - Husband
W - Wife
LT - Living Trust
SP - Separate Property
CP - Community Property
PRO - Probate
JT - Joint
ROS - Rights of Survivorship
JTROS - Joint with Rights of Survivorship

	DRIP ACCOUNTS		
DT	Chevron Acct #125175509293 (Basis $67.27/share was on H's Date of death); Value at right estimated as of W's Date of death 612.00 shares at $107.0650/share.	✓	$ 65,523.78
DT	Chevron Acct#125175509293 (Basis $6727/share was on H's Date of death); Value at right estimated as of W's Date of death 604.961 shares at $107.0650/share	✓	$ 64,770.15
DT	ExxonMobil Acct #C0009467769 (basis $67.99/share basis on H's DOD) Value at right reflects estimated value on the date of W's date of death for 583 Shares (as of June 2011 and March 2012)	✓	$ 46,517.57
	SUBTOTAL	$ 176,811.50	
	MISCELLANEOUS		
DT	Rental income from Iowa farm -Normally rec'd payments 10/2011 ($15,510.00/6 = $2,585.00/mo) and next payment due 03/2012; Amount at right shown as liability (advance payment received but not yet earned as of date of W's passing)		$ (10,340.00)
	SUBTOTAL	$ (10,340.00)	
GRAND TOTAL	**DECEDENT'S TRUST ASSETS**		$ 2,593,059.70

ST(LT)W	TOTAL 11/11/2011	$557,961.51
DT(H)	TOTAL 11/11/2011	$2,593,059.70
ILIT	TOTAL VALUE LIFE INSURANCE TRUST (income $440.00)	$250,000.00
	TOTAL 11/11/2011 ASSETS	**$3,401,021.21**

Key:
H - Husband
W - Wife
LT - Living Trust
SP - Separate Property
CP - Community Property
PRO - Probate
JT - Joint
ROS - Rights of Survivorship
JTROS - Joint with Rights of Survivorship

Bank of America Acct ending in :1143								
12/23/2010 through 3/9/2012								
	Date	Num	Description	Memo	Category	Tag	Clr	Amount
	BALANCE 12/22/2010							8,459.61
	12/23/2010	EFT	City Of Houston Bill Payment		Utilities:Water		c	-52.74
	12/23/2010	EFT	External Transfer Fee - 3 Day -		Bank Charge		c	-3.00
	12/24/2010	6848	Randall's		Groceries		c	-60.51
	12/24/2010	6849	Amy Tschirhart	xmas	Gifts Given		c	-200.00
	12/27/2010	6845	Silvana		Hair		c	-25.00
	12/30/2010	6850	Void					0.00
	12/30/2010	6851	Tino	carl	Medical:In Home			-1,245.00
	12/30/2010	6852	Michael Brooks		Medical:In Home		c	-855.00
	12/30/2010		Check Order00099 DES:FEE ID:U016		Bank Charge		c	-27.00
	12/31/2010	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	12/31/2010	DEP	Deposit		Invest Inc		c	70.30
	12/31/2010	DEP	Benefits DES:PENSION ID:36301198		Income		c	594.41
	12/31/2010		Tx Tlr Cash Withdrawal From Chk				c	-25.00
	12/31/2010		Tx Tlr Transfer To Chk 9546 Bank				c	-25.00
	1/3/2011	6847	Medical Aids		Medical:Supplies		c	-32.48
	1/3/2011	DEP	Us Treasury 310 DES:SOC Sec ID:2		Income		c	1,780.00
	1/3/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-2,466.20
	1/4/2011	6853	Robert Cantu		Medical:In Home		c	-736.00
	1/5/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	10,000.00
	1/5/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	10,000.00
	1/5/2011	EFT	State Farm	PPD	Insurance		c	-299.93
	1/5/2011	EFT	Comcast		Utilities:Cable TV		c	-64.04
	1/6/2011		Online Banking Transfer To Carole/mom		Carole/mom		c	-2,500.00
	1/13/2011	EFT	Check Order00099 DES:FEE ID:U016		Misc:Check Order		c	-15.00
	1/19/2011	EFT	Amy Tschirhart		Gifts Given		c	-6,000.00
	1/20/2011	EFT	External Transfer Fee - 3 Day -		Bank Charge		c	-3.00
	1/20/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-5,000.00
	1/21/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-80.94
	1/21/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-134.05
	1/25/2011	7001	United States Treasury		Tax:Fed		c	-2,840.00
	1/25/2011	7003	Vacek		Legal Fees		c	-880.15
	1/25/2011	7005	Entex		Utilities:Gas & Electric		c	-130.42
	1/26/2011	7004	Leo Vasquez Tax Assessor Collector		Tax:Property		c	-1,112.87
	1/27/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-3,500.00

Schedule E

Bank of America Acct ending in :1143								
12/23/2010 through 3/9/2012								
	Date	Num	Description	Memo	Category	Tag	Clr	Amount
	1/27/2011	EFT	Comcast		Utilities:Cable TV		c	-59.77
	1/27/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-68.68
	1/31/2011	DEP	Benefits DES:PENSION ID:02700488		Income		c	600.71
	2/1/2011	7002	State Of Iowa Treasurer		Tax:State		c	-330.00
	2/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	2/2/2011	EFT	State Farm	PPD	Insurance		c	-299.93
	2/7/2011		Online Banking Transfer To Carole/mom		Carole/mom		c	-700.00
	2/8/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	340.83
	2/9/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	25,000.00
	2/10/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-10,000.00
	2/10/2011	EFT	Online Banking Transfer To Life Ins Acct		Insurance:Life		c	-7,200.00
	2/18/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-106.89
	2/25/2011	EFT	Comcast		Utilities:Cable TV		c	-67.65
	2/28/2011	DEP	Benefits DES:PENSION ID:05500518		Income		c	600.71
	2/28/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-76.39
	3/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	3/1/2011	EFT	Bank Of America Credit Card Bill		Household		c	-282.47
	3/1/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-52.74
	3/2/2011	EFT	State Farm	PPD	Insurance		c	-299.93
	3/7/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	219.69
	3/15/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-100.71
	3/15/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-70.42
	3/17/2011	7006	Vacek		Legal Fees		c	-340.00
	3/20/2011	7007	Amy Brunsting		Reimbursement		c	-40.00
	3/23/2011	EFT	Comcast		Utilities:Cable TV		c	-63.71
	3/31/2011	DEP	Benefits DES:PENSION ID:08800208		Income		c	600.71
	4/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	4/1/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	787.00
	4/1/2011	EFT	Bank Of America Credit Card Bill		Household		c	-38.00
	4/4/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-90.34
	4/4/2011	EFT	State Farm	PPD	Insurance		c	-301.36
	4/7/2011	EFT	Candy Curtis		Gifts Given		c	-3,000.00
	4/8/2011	EFT	County Treasurer DES:TAX ID: 971	farm	Tax:Property		c	-1,387.40
	4/11/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-3,000.00
	4/11/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-3,000.00
	4/12/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	5,343.22

Bank of America Acct ending in :1143								
12/23/2010 through 3/9/2012								
	Date	Num	Description	Memo	Category	Tag	Clr	Amount
	4/15/2011	7008	Void					0.00
	4/15/2011	7009	Void					0.00
	4/15/2011	7010	United States Treasury	Decedents trust 2010 tax	Tax:Fed		c	-7,095.00
	4/15/2011	7011	United States Treasury	Decedents trust 2011 tax qtr est	Tax:Fed		c	-1,780.00
	4/15/2011	7012	United States Treasury	Surv Trust 2011 tax qtr est	Tax:Fed		c	-3,095.00
	4/15/2011	7013	United States Treasury	Surv Trust 2010 tax	Tax:Fed		c	-3,620.00
	4/15/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	13,791.21
	4/18/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-93.99
	4/20/2011	EFT	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	1,253.84
	4/21/2011	EFT	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	15,206.69
	4/25/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-7,500.00
	4/26/2011	EFT	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	3,538.51
	4/26/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-176.85
	4/26/2011	EFT	Comcast		Utilities:Cable TV		c	-63.71
	4/28/2011	EFT	Comcast		Utilities:Cable TV		c	-63.71
	4/29/2011	DEP	Benefits DES:PENSION ID:11700518		Income		c	600.71
	4/29/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	5/2/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	282.71
	5/2/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-2,967.61
	5/3/2011	EFT	State Farm	PPD	Insurance		c	-300.62
	5/9/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-177.21
	5/10/2011	7014	TDECU	Luke Truck	Gifts Given		c	-5,443.22
	5/11/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-99.74
	5/16/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-4,000.00
	5/19/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-174.61
	5/24/2011		Online Banking Transfer To Carole/mom		Carole/mom		c	-2,000.00
	5/24/2011		Online Banking Transfer To Carole/mom		Carole/mom		c	-5,000.00
	5/24/2011		Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	54,000.00
	5/26/2011	EFT	Comcast		Utilities:Cable TV		c	-11.52
	5/27/2011	7016	The Victoria Col DES:TNET Ach Ck	Luke college	Education		c	-461.00
	5/27/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-95.73
	5/27/2011	EFT	Bluebonnet Credit Union	w/ medical	Household		c	-1,864.49
	5/31/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	208.00
	5/31/2011	DEP	Benefits DES:PENSION ID:14600508		Income		c	600.71
	5/31/2011	EFT	Comcast		Utilities:Cable TV		c	-11.52
	6/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78

Bank of America Acct ending in :1143

12/23/2010 through 3/9/2012

Date	Num	Description	Memo	Category	Tag	Clr	Amount
6/2/2011	7015	Vacek		Legal Fees		c	-575.59
6/2/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-6,355.65
6/2/2011	EFT	Iowa 529 Ach DES:CONTRIB ID:0000	kt college	Gifts Given		c	-500.00
6/2/2011	EFT	State Farm	PPD	Insurance		c	-300.62
6/2/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-8,500.00
6/3/2011	EFT	Am-honda DES:PMT ID:000001032223	for katie	Gifts Given		c	-5,750.51
6/6/2011	EFT	Chase DES:EPAY ID:1125968648 Ind		Credit Card		c	-2,358.75
6/8/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-2,000.00
6/8/2011	TXFR	Candy Curtis		Gifts Given		c	-2,000.00
6/9/2011	7017	Kroese & Kroese	mom	Tax Preparation		c	-561.93
6/9/2011	7018	Kroese & Kroese	decedents trust	Tax Preparation		c	-1,123.87
6/9/2011	7019	Wilchester West Fund		Tax:Other		c	-327.00
6/9/2011	7020	United States Treasury	Surv Trust 2010 tax qtrly	Tax:Fed		c	-3,620.00
6/9/2011	7021	Treasurer State Of Iowa		Tax:State		c	-47.00
6/9/2011	7022	United States Treasury	Dec Trust 2010 tax qtrly	Tax:Fed		c	-1,780.00
6/9/2011	DEP	Deposit		Invest Inc		c	4.18
6/9/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-154.09
6/9/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-130.35
6/10/2011	DEP	Exxon		Invest Inc		c	896.76
6/13/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	51,060.56
6/13/2011	TXFR	Amy Tschirhart	supplies to fix house	Reimbursement		c	-100.00
6/14/2011	EFT	External Transfer Fee - 3 Day -		Bank Charge		c	-3.00
6/17/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-217.04
6/22/2011	7710	Electchk 7710 Bcf - 14411 We 06/		Utilities:Water		c	-314.57
6/27/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-2,364.34
6/28/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-86.12
6/28/2011	EFT	Comcast		Utilities:Cable TV		c	-52.20
6/30/2011	DEP	Benefits DES:PENSION ID:17900218		Income		c	600.71
7/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
7/1/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	704.00
7/5/2011	EFT	State Farm	PPD	Insurance		c	-300.62
7/5/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-10,000.00
7/6/2011	7024	Medical Chest Associates		Medical:Doctor		c	-4.12
7/6/2011	EFT	Chase DES:EPAY ID:1142870017 Ind		Credit Card		c	-2,976.35
7/7/2011	7023	Duke Medical Equipment		Medical:Supplies		c	-7.62
7/11/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-282.51

Bank of America Acct ending in :1143

12/23/2010 through 3/9/2012

Date	Num	Description	Memo	Category	Tag	Clr	Amount
7/11/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-224.42
7/15/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-7,242.83
7/18/2011	EFT	Bluebonnet Credit Union	w medical	Household		c	-175.47
7/18/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-166.12
7/18/2011	EFT	Chase DES:EPAY ID:1154305808 Ind		Credit Card		c	-1,998.19
7/20/2011	EFT	Safebox Fee		Bank Charge		c	-8.00
7/26/2011	EFT	Amy Tschirhart	supplies to fix house	Reimbursement		c	-100.00
7/27/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-82.16
7/27/2011	EFT	External Transfer Fee - 3 Day -		Bank Charge		c	-3.00
7/28/2011	EFT	Comcast		Utilities:Cable TV		c	-63.72
7/29/2011	DEP	Benefits DES:PENSION ID:20800528		Income		c	600.71
8/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
8/1/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	253.00
8/1/2011		Online Banking Transfer To Carole/mom		Carole/mom		c	-10,000.00
8/2/2011	EFT	State Farm		Insurance		c	-300.62
8/5/2011	7025	Vacek	retainer	Legal Fees		c	-1,000.00
8/8/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-277.78
8/10/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-170.89
8/16/2011	EFT	Bluebonnet Credit Union	with medical	Household		c	-1,172.08
8/17/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-308.10
8/24/2011	TXFR	Candy Curtis		Gifts Given			-2,000.00
8/26/2011	EFT	Utsa Admissions	Luke college	Education		c	-575.00
8/26/2011	EFT	AT&T	PAYMENT	Utilities:Telephone		c	-84.47
8/29/2011	EFT	Comcast		Utilities:Cable TV		c	-63.72
8/29/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-10,000.00
8/31/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	199.00
8/31/2011	DEP	Benefits DES:PENSION ID:23900168		Income		c	600.71
9/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
9/1/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-3,256.32
9/2/2011	EFT	State Farm	PPD	Insurance		c	-290.04
9/5/2011	7026	Treasurer State Of Iowa	mom	Tax:State		c	-230.00
9/5/2011	7027	United States Treasury	Sept mom's trust pmt	Tax:Fed		c	-2,100.00
9/5/2011	7028	United States Treasury	Sept dad's trust pmt	Tax:Fed		c	-1,780.00
9/5/2011	7029	Kroese & Kroese	farm lease	Tax Preparation		c	-203.06
9/6/2011	EFT	Chase DES:EPAY ID:1172082054 Ind		Credit Card		c	-999.04
9/8/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-265.10

Bank of America Acct ending in :1143								
12/23/2010 through 3/9/2012								
	Date	Num	Description	Memo	Category	Tag	Clr	Amount
	9/9/2011	DEP	Exxon		Invest Inc		c	274.01
	9/12/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-168.71
	9/16/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-344.55
	9/19/2011	EFT	Bluebonnet Credit Union	w/ medical	Household		c	-790.04
	9/23/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	10,000.00
	9/23/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-4,767.36
	9/26/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-84.47
	9/26/2011		Online Banking Transfer To Carole/mom		Carole/mom		c	-5,000.00
	9/28/2011	EFT	Comcast		Utilities:Cable TV		c	-63.72
	9/29/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	721.00
	9/30/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	9/30/2011	DEP	Benefits DES:PENSION ID:27022468		Income		c	600.71
	10/4/2011	EFT	County Treasurer DES:TAX ID: 119	farm	Tax:Property		c	-1,598.40
	10/4/2011	EFT	State Farm	PPD	Insurance		c	-290.04
	10/4/2011	EFT	Chase DES:EPAY ID:1193123150 Ind		Credit Card		c	-2,390.35
	10/11/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-184.35
	10/12/2011	7030	DeKoster & DeKoster	farm contract	Legal Fees		c	-100.00
	10/12/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-227.06
	10/14/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	15,000.00
	10/17/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-217.43
	10/18/2011	EFT	Bluebonnet Credit Union	w/ medical	Household		c	-687.84
	10/19/2011	EFT	Chase DES:EPAY ID:1205559052 Ind		Credit Card		c	-2,033.30
	10/20/2011	7031	Kroese & Kroese		Tax Preparation		c	-700.00
	10/21/2011	7032	Vehs Band Boosters	Kt band	Gifts Given		c	-280.00
	10/26/2011	EFT	Candy Curtis		Gifts Given		c	-2,000.00
	10/27/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	30,000.00
	10/28/2011	EFT	Comcast		Utilities:Cable TV		c	-63.71
	10/31/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	231.00
	10/31/2011	DEP	Benefits DES:PENSION ID:29923478		Income		c	600.71
	11/1/2011	DEP	Minnesota Life DES: Annuity ID:0		Income:Annuity		c	91.78
	11/1/2011	TXFR	Luke Riley		Education		c	-2,000.00
	11/2/2011	EFT	State Farm	PPD	Insurance		c	-290.04
	11/3/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-102.52
	11/7/2011	EFT	Wire TYPE:WIRE Out DATE:111107 T	to anita for future trust exp	Legal Fees	redeposited into new Surv Trust acct	c	-10,000.00

Bank of America Acct ending in :1143								
12/23/2010 through 3/9/2012								
	Date	Num	Description	Memo	Category	Tag	Clr	Amount
	11/7/2011	EFT	Wire TYPE:WIRE Out DATE:111107 T	to amy for future trust exp	Legal Fees	redeposited into new Surv Trust acct	c	-10,000.00
	11/7/2011	EFT	Amy Tschirhart	for supplies to fix house	Reimbursement		c	-1,000.00
	11/7/2011	EFT	Bank Of America Credit Card Bill		Credit Card		c	-323.88
	11/7/2011	EFT	Wire Transfer Fee		Bank Charge		c	-25.00
	11/7/2011	EFT	Wire Transfer Fee		Bank Charge		c	-25.00
	11/8/2011	EFT	A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B		Utilities:Telephone		c	-84.44
	11/8/2011	EFT	External Transfer Fee - 3 Day -		Bank Charge		c	-3.00
	11/8/2011	EFT	Chase DES:EPAY ID:1218615408 Ind		Credit Card		c	-3,274.51
	11/9/2011	DEP	Deposit		Invest Inc		c	30.40
	11/9/2011	DEP	Safe Deposit Box Rent Refund Fde		Bank Charge		c	82.00
	11/9/2011		Tx Tlr Payment To Sdb 2575 Banki		Bank Charge		c	-25.00
	11/10/2011	EFT	Candy Curtis		Gifts Given		c	-2,000.00
	11/10/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-201.70
	11/10/2011	EFT	A&t DES:PAYMENT ID:787780565AUS		Utilities:Telephone		c	-168.24
	11/10/2011	EFT	Online Banking Transfer To Carole/mom		Carole/mom		c	-5,000.00
	11/12/2011	7033	Memorial Oaks		Funeral		c	-1,595.00
	11/12/2011	7034	Void					0.00
	11/14/2011	7035	Memorial Oaks		Funeral		c	-1,511.29
	11/14/2011	EFT	Safebox Fee		Bank Charge		c	-135.00
	11/15/2011	7036	Memorial Oaks	organist	Funeral		c	-150.00
	11/15/2011	7037	Bob Johnson	pastor	Funeral		c	-300.00
	11/15/2011	EFT	Stream Energy-tx Bill Payment		Utilities:Gas & Electric		c	-160.68
	11/21/2011	DEP	Wire TYPE:WIRE In DATE: 111121 T		Invest Inc		c	25,112.57
	11/21/2011	EFT	Wire Transfer Fee		Bank Charge		c	-12.00
	11/22/2011	7040	Nelva E Brunsting Survivors Trust	to open new trust acct	Cash		c	-500.00
	11/23/2011	EFT	Entex	PPD	Utilities:Gas & Electric		c	-65.66
	11/23/2011	EFT	Spring Brnch Isd DES:CHECKPAYMT		Tax:Other		c	-227.24
	11/25/2011	EFT	Online Banking Transfer To Nelva E Brunsting Surv Trust	to start fund new trust acct	Cash		c	-25,000.00
	11/29/2011	EFT	Comcast		Utilities:Cable TV		c	-63.71
	11/29/2011	EFT	Bluebonnet Credit Union	includes medical	Household		c	-1,165.23
	11/30/2011	DEP	Benefits DES:PENSION ID:32923368		Income		c	600.71
	12/2/2011	EFT	State Farm	PPD	Insurance		c	-290.04
	12/5/2011	DEP	Edward Jones DES:INVESTMENT ID:0		Invest Inc		c	179.00
	12/6/2011	7041	Justin Alexander	for kt - reimburse	Medical	reimbursed to Surv trust acct Mar 2012	c	-40.00

Bank of America Acct ending in :1143								
12/23/2010 through 3/9/2012								
Date	Num	Description	Memo	Category	Tag	Clr	Amount	
12/9/2011	EFT	Exxon		Div Income		c	274.01	
12/9/2011	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-252.42	
1/5/2012	EFT	State Farm	PPD	Insurance		c	-290.04	
1/9/2012	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-115.49	
2/2/2012	EFT	State Farm	PPD	Insurance		c	-290.04	
2/13/2012	EFT	City Of Houston DES:WATER Bill I		Utilities:Water		c	-47.13	
3/2/2012	EFT	State Farm		Insurance		c	-292.79	
3/7/2012	DEP	AT&T	closed acct	Reimbursement		c	20.49	
3/9/2012	DEP	Exxon		Div Income		c	274.01	
12/23/2010 - 3/9/2012							1,471.75	
TOTAL INFLOWS	293,516.61	293,516.61	293,516.61	293,516.61	293,516.61	293,516.61	293,516.61	
TOTAL OUTFLOWS	-292,044.86	-292,044.86	-292,044.86	-292,044.86	-292,044.86	-292,044.86	-292,044.86	

Date	Gift	Stock price	amount	Person	purpose
Mom/Dad were trustees					
12/21/2010	trxfr		$ 7,000.00	Amy Brunsting	mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights
1/4/2011	trxfr		$ 6,000.00	Amy Brunsting	mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights
6/22/2009			$ 1,000.00	Amy Brunsting	college fund
7/14/2009			$ 1,000.00	Amy Brunsting	college fund
11/14/2007	chk# 5715		$ 5,000.00	Amy Brunsting	
1/20/2006	chk# 5143		$ 200.00	Amy Brunsting	
2/11/2002	chk# 3526		$ 200.00	Amy Brunsting	college fund
12/31/2002	chk# 3911		$ 200.00	Amy Brunsting	college fund
	Total Amy Brunsting		$ 20,600.00		
10/2/2009	chk# 6359		$ 1,000.00	Andy Curtis	
2/8/2010	chk# 6518		$ 5,000.00	Anita Brunsting	
6/24/2009	chk# 6278		$ 1,000.00	Anita Brunsting	graduation gift to me for finishing my doctorate
7/14/2009	chk# 6294		$ 1,000.00	Anita Brunsting	college fund
9/8/2009	chk# 6338		$ 1,000.00	Anita Brunsting	college fund
10/19/2009	chk# 6403		$ 1,250.00	Anita Brunsting	
1/20/2006	chk# 5142		$ 200.00	Anita Brunsting	college fund
1/31/2006	chk# 5155		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
2/21/2006	chk# 5172		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
4/1/2006	chk# 5233		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
1/10/2003	chk# 3920		$ 200.00	Anita Brunsting	college fund
2/11/2002	chk# 3527		$ 200.00	Anita Brunsting	college fund
	Total Anita Brunsting		$ 10,300.00		
3/17/2010	chk # 6386		$ 750.00	Candy Curtis	
1/27/2009	chk # 6124		$ 2,000.00	Candy Curtis	
7/29/2009	chk# 6309		$ 4,000.00	Candy Curtis	
7/8/2008	chk # 5917		$ 2,000.00	Candy Curtis	
8/3/2009	chk# 5944		$ 1,500.00	Candy Curtis	
7/6/2001	trxfr		$ 20,000.00	Candy Curtis	
1/19/2010			$ 5,000.00	Candy Curtis	
3/29/2010			$ 7,000.00	Candy Curtis	
6/22/2010			$ 20,000.00	Candy Curtis	Taken against inheritance (documentation on file w/ Vacek & Freed) expenses, divorce
	Total Candy Curtis		$ 62,250.00		
11/10/2005	chk# 5070		$ 10,000.00	Carl Brunsting	
3/12/2003	chk# 3986		$ 9,000.00	Carl Brunsting	
4/9/2003	chk# 4017		$ 11,000.00	Carl Brunsting	

Schedule F

Date	Gift	Stock price	amount	Person	purpose
9/17/2001	chk# 3347		$ 2,000.00	Carl Brunsting	
10/6/2010			$ 25,000.00	Carl Brunsting	medical bills
2010-2011			$ 21,899.61	Carl Brunsting	paid one medical bill ($1565.70) and to caretakers directly for his care from 7/13/2010 through 1/9/2011, (additional days occurred from Jan-April 2011 than included payment to caretakers as well as groceries and his medical supplies, but specific dates in this time period were not recorded)
	Total Carl Brunsting		$ 78,899.61		
6/27/2009	chk# 6285		$ 2,000.00	Carole Brunsting	
2/12/2009	chk# 5794		$ 500.00	Carole Brunsting	
3/18/2008	chk# 5821		$ 250.00	Carole Brunsting	
11/13/2007	chk# 5713		$ 600.00	Carole Brunsting	
1/5/2006	chk# 5129		$ 1,000.00	Carole Brunsting	loan?
7/1/2006	chk# 5287		$ 1,200.00	Carole Brunsting	
3/23/2005	chk# 4785		$ 450.00	Carole Brunsting	
12/8/2005	chk# 5090		$ 1,500.00	Carole Brunsting	
7/2/2005	chk# 4901		$ 350.00	Carole Brunsting	
10/2/2005	chk# 5016		$ 2,500.00	Carole Brunsting	
10/21/2003	chk# 4232		$ 1,000.00	Carole Brunsting	
12/12/2002	chk# 9878 ?		$ 1,500.00	Carole Brunsting	
12/17/2002	chk# 3883 ?		$ 5,000.00	Carole Brunsting	
3/23/2010			$ 7,000.00	Carole Brunsting	
5/18/2010			$ 1,000.00	Carole Brunsting	
10/1/2010			$ 20,000.00	Carole Brunsting	original intent to take against inheritance, but no letter/documentation found to date; will be treated as a gift; to fix house
	Total Carole Brunsting		$ 45,850.00		
10/2/2009	chk# 6358		$ 1,000.00	Kevan Curtis	
Anita became trustee Dec. 2011					
5/11/2011	1120 shares exxon Survivors trust	$ 81.12	90854.4	Amy Brunsting	to pay off house
	Total Amy Brunsting		$ 90,854.40		
5/10/2011			$ 5,443.22	Anita Brunsting	pay off Luke's truck
6/3/2011			$ 5,750.51	Anita Brunsting	pay off Honda for Katie
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Anita Brunsting	borrowed against inheritance - for college expenses
6/15/2011	160 shares exxon Survivors trust	$ 78.66	$ 12,585.60	Anita Brunsting	borrowed against inheritance - for college expenses
	Total Anita Brunsting		$ 37,360.33		
4/7/2011			$ 3,000.00	Candy Curtis	property taxes
6/8/2011			$ 2,000.00	Candy Curtis	new bed?
6/15/2011	160 shares exxon Survivors trust	$ 78.66	$ 12,585.60	Candy Curtis	for reserve after mom passed away to keep helping her w/ expenses if trust money was not available

Date	Gift	Stock price	amount	Person	purpose
8/24/2011			$ 2,000.00	Candy Curtis	expenses
10/26/2011			$ 2,000.00	Candy Curtis	medical bills
11/10/2011			$ 2,000.00	Candy Curtis	travel to see mom
	Total Candy Curtis		$ 23,585.60		
6/15/2011	1325 shares exxon Decedents trust	$ 78.66	$ 104,224.50	Carole Brunsting	to pay off/fix house
	Total Carole Brunsting		$ 104,224.50		
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Ann Brunsting UGMA (grandchild)	gift for future car/college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Jack Brunsting UGMA (grandchild)	gift for future car/college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Katie Riley UGMA (grandchild)	gift for college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Luke Riley (grandchild)	gift for college exp

Carl's Medical Support Bills

Date	Check #	Payee	Amount	
7/13/2010	6726	Tino	$ 1,339.50	
7/14/2010	6727	Robert	$ 60.00	
7/15/2010	6729	Shimeka	$ 180.00	
7/21/2010	6588	Tino	$ 1,581.00	
7/27/2010	6393	Tino	$ 450.00	
7/27/2010	6394	Robert	$ 327.00	
7/29/2010	6595	Shimeka	$ 375.00	
8/3/2010	6597	Tino	$ 654.00	
8/9/2010	6607	Tino	$ 972.00	
8/15/2010	6611	MHS Physicians (Carl)	$ 1,565.70	
8/15/2010	6614	Tino	$ 45.00	
8/23/2010	6623	Tino	$ 45.00	
10/4/2010	6690	Carl	$ 25,000.00	
10/18/2010	6741	Robert	$ 255.00	
10/22/2010	6747	Robert	$ 170.00	
10/26/2010	6749	Robert	$ 105.00	
11/1/2010	6764	Robert	$ 510.00	
11/4/2010	6769	Michael Brooks	$ 237.00	
11/5/2010	6771	Robert	$ 309.00	
11/8/2010	6777	Robert	$ 330.00	
11/10/2010	6781	Michael Brooks	$ 300.00	
11/12/2010	6784	Robert	$ 285.00	
11/15/2010	6793	Robert	$ 270.00	
11/17/2010	6795	Michael Brooks	$ 240.00	
11/16/2010	6799	Robert	$ 295.00	
11/24/2010	6806	Michael Brooks	$ 255.00	
11/24/2010	6809	Robert	$ 345.00	
11/26/2010	6810	Michael Brooks	$ 270.00	
12/1/2010	6817	Michael Brooks	$ 420.00	
12/1/2010	6818	Tino	$ 849.38	
12/3/2010	6819	Robert	$ 135.00	
12/5/2010	6820	Robert	$ 855.00	
12/5/2010	6821	Antonio	$ 135.00	
12/7/2010	6826	Michael Brooks	$ 300.00	

Schedule G

Carl's Medical Support Bills

Date	Check #	Payee	Amount	
12/8/2010	6828	Michael Brooks	$ 150.00	
12/8/2010	6831	Shimeka	$ 416.00	half
12/13/2010	6832	Robert	$ 382.31	half
12/14/2010	6836	Michael Brooks	$ 525.00	
12/15/2010	6840	Tino	$ 435.00	half
12/17/2010	6843	Tino	$ 412.50	half
12/16/2010	6844	Michael Brooks	$ 375.00	
12/19/2010	6846	Robert	$ 469.92	2/3
12/24/2010	pd carole	robert, tino, michael	$ 1,151.70	2/3
12/30/2010	6851	Tino	$ 821.70	2/3
12/28/2010	6852	Michael Brooks	$ 564.30	2/3
1/1/2011		Robert	$ 435.60	2/3
1/2-1/9/2011		robert, tino, michael	$ 1,296.00	
			$ 46,899.61	
		any additional days	$216.00/day	

Card/Expense	Closing Date	Amount Charged Against Trust	2%annual value of trust/ month	Balance Remaining	Date
			$ 4,166.00	$ 4,166.00	Jan-11
			$ 4,166.00	$ 8,332.00	Feb-11
			$ 4,166.00	$ 12,498.00	Mar-11
			$ 4,166.00	$ 16,664.00	Apr-11
Visa	5/5/2011	$ 3,327.30	$ 4,166.00	$ 17,502.70	May-11
Luke college	5/27/2011	$ 461.00		$ 17,041.70	
Katie College	6/2/2011	$ 500.00	$ 4,166.00	$ 20,707.70	Jun-11
Visa	6/6/2011	$ 2,634.34		$ 18,073.36	
MC	6/6/2011	$ 2,358.75		$ 15,714.61	
MC	7/6/2011	$ 2,976.35	$ 4,166.00	$ 16,904.26	Jul-11
Visa	7/7/2011	$ 7,242.83		$ 9,661.43	
MC	7/18/2011	$ 1,998.19		$ 7,663.24	
Visa	8/5/2011	$ 3,199.02	$ 4,166.00	$ 8,630.22	Aug-11
Luke college	8/26/2011	$ 575.00		$ 8,055.22	
MC	9/6/2011	$ 999.04	$ 4,166.00	$ 11,222.18	Sep-11
Visa	9/7/2011	$ 4,767.36		$ 6,454.82	
MC	10/4/2011	$ 2,390.35	$ 4,166.00	$ 8,230.47	Oct-11
Visa	10/6/2011	$ 102.52		$ 8,127.95	
MC	10/19/2011	$ 2,033.30		$ 6,094.65	
Luke college	11/1/2011	$ 2,000.00	$ 4,166.00	$ 8,260.65	Nov-11
Visa	11/5/2011	$ 230.22		$ 8,030.43	
MC	11/8/2011	$ 3,274.51		$ 4,755.92	
Total		**$ 41,070.08**	**$ 45,826.00**		

Schedule H

Brunsting Family Survivor's and Decedent's Assets

Asset	# shares	price/share *	Amount*	*values as of 3/26/2012
Chevron/Texaco-decedent	614.1303	107.84	$66,227.81	
Chevron/Texaco-survivor	172.4055	107.84	$18,592.21	
Chevron - Decedent	612	107.84	$65,998.08	
ExxonMobil-Decedent	583	87.16	$50,814.28	
ExxonMobil-survivor	835.910671	87.16	$72,857.97	
MetLife - Survivor	95	38.31	$3,639.45	
Survivor's Trust Edward Jones			$1.05	
Decedent's Trust Edward Jones			$250,506.13	
Survivor's Trust Checking			$446,235.69	Includes deposit of $433,129.32 from sale of house
Decedent's Trust Checking			$41,667.77	Includes deposit of first 1/2 of farm rent for 2012: $26437.50 and Chevron Dividend: $495.72
Surv Trust Checking (prior to mom's death)			$1,471.75	Some automated payments for house utilities were set up on this acct - it is being left open until final water bill has been paid (April 2012)
Misc. Coins			$690.00	
Gold Watches/misc jewelry			$853.00	
Total Liquid Assets			$1,019,555.19	
Farm (acres)	141	15300	$2,157,300.00	appraised value/acre
House				final sale profit $433,129.32 - reflected in balance in survivors trust checking acct
Total Trust			$3,176,855.19	

Schedule I

Trust Expenses

Date	Vendor	Purpose	Amount
11/12/2011	Kroger - Houston	Groceries when cleaning/packing house	$ 23.31
11/16/2011	Phillips 66 - Houston	Transportation	$ 56.20
11/22/2011	Phillips 66 - Houston	Transportation	$ 49.08
12/11/2011	Vacek	Legal	$ 4,500.00
12/11/2011	US Treasury	tax payment for Decedent Trust	$ 1,780.00
12/12/2011	Wilchester West Fund	subdivision dues	$ 359.00
12/18/2011	Mr. Pham Chen	Lawn care - 2 mos	$ 200.00
12/18/2011	Centerpoint Energy	natl gas for house	$ 54.62
12/18/2011	Kelsey-Seybold	mom's medical	$ 13.92
12/18/2011	Memorial Hermann	mom's medical	$ 226.40
12/18/2011	ACS Primary Care	mom's medical	$ 6.87
12/21/2011	USPS	Trust Docs	$ 1.28
12/26/2011	Home Depot	Home Repair/Security	$ 92.56
12/26/2011	Exxon - Victoria	Transportation	$ 45.15
12/28/2011	Kroger - Houston	Groceries when cleaning/packing house	$ 16.31
12/28/2011	HEB - Houston	Groceries when cleaning/packing house	$ 3.50
12/28/2011	Ace Hardware	Supplies to pack up house	$ 66.53
12/28/2011	Herb Jamison	house appraisal	$ 450.00
12/29/2011	Shell - Victoria	Transportation	$ 44.51
12/29/2011	Amy Brunsting	tires for mom's car/house repairs/transportation	$ 425.94
1/9/2012	Exxon - Victoria	Transportation	$ 49.57
1/10/2012	Dr. Annie Uralil	mom's medical	$ 44.06
1/16/2012	Northwoods Urology Associates	mom's medical	$ 740.77
1/17/2012	Don Sumners Tax Asses/Collect	2011 property tax for mom's house	$ 1,285.05
1/20/2012	Stream Energy	electricity for mom's house	$ 59.96
1/31/2012	ATT	phone/internet for mom's house	$ 86.00
2/2/2012	Visa	Credit Card Payment for moving supplies, meals and gas (unhide rows to see	$ 269.84
2/11/2012	Memorial Hermann	mom's medical	$ 41.72
2/14/2012	ATT	phone/internet for mom's house	$ 72.16
2/17/2012	Stream Energy	electricity for mom's house	$ 19.10
2/29/2012	Durapier	deposit to level mom's house	$ 500.00
3/2/2012	Amy Brunsting	moving expenses on mom's house	$ 844.35
3/6/2012	Carole Brunsting	reimbursement for paying Durapier & paying Tino $780 to oversee project (6	$25,655.00
3/11/2012	Kroese & Kroese	appraisal of farm and consult w/ Iowa atty	$ 2,175.00
3/15/2012	Centerpoint Energy	natl gas for house	$ 158.09
3/16/2012	Return Check Fee	Met Life dividend check returned (checking into why)	$ 12.00
3/21/2012	Postage	to mail tax info for Surv and Deced Trust to Rich Rikkers CPA	$ 14.80
3/26/2012	Stream Energy	electricity for mom's house	$ 39.19
	Total		**$40,481.84**

Liabilities
Farm Taxes
Remaining medical bills
Decendent & Survivor Trust tax prep
Trustee Expenses

Schedule J

Exhibit 3

Financial graphs and charts compiled with the numbers provided by defendants

		%	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010		2011	
Anita	207,480	29.23%		200	200		100,000	3,900	13,500	2,000	4,250	5,000	4.18%	78,430	21.94%
Carole	153,225	21.59%		6,500	1,000		4,800	5,350	600	250	2,500	28,000	23.40%	104,225	29.16%
Amy	119,454	16.83%		400				200	12,000	1,000	2,000	7,000	5.85%	96,854	27.10%
Candy	91,436	12.88%	20,000						600	7,000	7,500	32,750	27.37%	23,586	6.60%
Carl	81,900	11.54%	2,000		20,000		10,000	3,000				46,900	39.20%		
Katie	13,581	1.91%												13,581	3.80%
Luke	13,581	1.91%												13,581	3.80%
Ann	13,581	1.91%												13,581	3.80%
Jack	13,581	1.91%												13,581	3.80%
Kevan	1,000	0.14%									1,000				
Andy	1,000	0.14%									1,000				
	709,819		22,000	7,100	21,200		114,800	12,450	26,700	10,250	18,250	119,650		357,419	
			3.10%	1.00%	2.99%		16.17%	1.75%	3.76%	1.44%	2.57%	16.86%		50.35%	

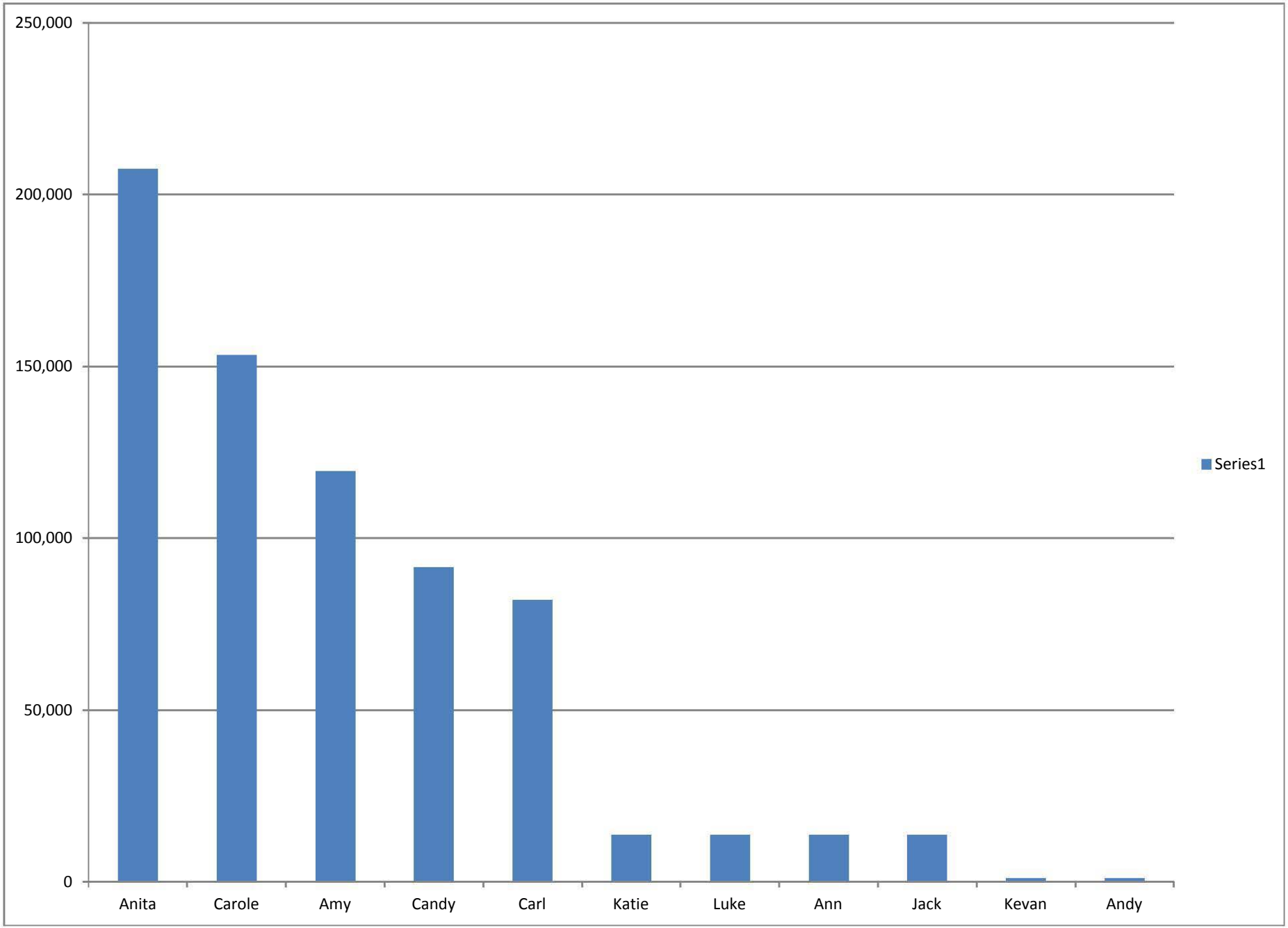
250,000
200,000
150,000
100,000
50,000
0
Anita
Carole
Amy
Candy
Carl
Katie
Luke
Ann
Jack
Kevan
Andy
Series1

Exhibit 4

Amy Verified Answer to Carl Brunsting complaint filed May 13, 2013

PROBATE COURT 4

CAUSE NO. 412,249-401

ESTATE OF	§	**IN PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

CARL HENRY BRUNSTING, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting	§	**IN PROBATE COURT**
v.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, Individually, as Attorney-in-Fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;	§	**NUMBER FOUR (4) OF**
AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;	§	
CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as nominal Defendant only;	§	
CANDACE LOUISE CURTIS	§	**HARRIS COUNTY, TEXAS**

FILED
2013 MAY 13 PM 1:01
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE:

05142013:0809:P0042

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5405d:00005:02415015

AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, Individually, as Attorney-in-Fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, in the above-styled and numbered cause files her Original Answer to Plaintiff's Original Petition and shows as follows:

GENERAL DENIAL

1. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, Individually, as Attorney-in-Fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, asserts a General Denial and respectfully requests that the Court require CARL HENRY BRUNSTING, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting, to prove his claims, charges, and allegations by clear and convincing evidence as required by the Constitution and Laws of the State of Texas.
2. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, Individually, as Attorney-in-Fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, respectfully reserves the right to file an amended Answer in this proceeding in the manner authorized by the Texas Rules of Civil Procedure.

VERIFIED DENIAL

3. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Personal Asset Trust because such trusts have not been created and therefore do not contain any trust property.

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05142013:0809:4004 4

AFFIRMATIVE DEFENSES

4. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART denies that all conditions precedent to a right of recovery have been satisfied.

5. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART would show that any claim for declaratory relief is without merit as the claim is subsumed within the other claims of Plaintiff. Alternatively, AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART asserts her right to recovery of reasonable attorney's fees under the provisions of Chapter 37, Texas Civil Practice and Remedies Code.

6. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART specifically denies and affirmatively asserts that Plaintiff's claim of conspiracy is not an independent tort or cause of action as a matter of law, and is not a basis for an award of actual or exemplary damages.

7. Plaintiff's claims are barred, or AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART's actions are excused, by the equitable or legal doctrines of affirmation, waiver, estoppel, laches, ratification (express or implied) and acceptance of benefits.

8. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART pleads all applicable provisions of the Trust and sub-trust instruments concerning the duties and liabilities of a person serving as Trustee, including any exculpatory provision applicable to alleged errors of judgment or mistake of fact or law or ordinary negligence.

9. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART pleads the doctrine of comparative responsibility as provided in Chapter 33 of the TEX. CIV. PRAC. & REM. CODE, and its application to any tort claim (intentional or otherwise) of the Plaintiff that may be alleged against her, including the present claims of conversion and negligence.

10. Any allegedly wrongful acts or omissions of AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, if and to the extent such acts and omissions occurred, were legally excused or justified.

17-20360.773

05142013:0609:P0045

Plaintiff is not entitled to punitive damages, and any and all excessive amounts of such damages sought violate Chapter 41 of the Texas Civil Practice and Remedies Code, the Texas Constitution and the United States Constitution, all of which set limits on the award of punitive damages. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART's alleged actions and omissions were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts.

THEREFORE, AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, Individually, as Attorney-in-Fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, asks that after final hearing of this matter, Plaintiff take nothing against her, that she recover her reasonable attorney's fees and costs, and for such other and further relief to which she may be entitled.

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05/13/2013 09:09:42 PM 4500946

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: _____
George W. Vie III
State Bar No. 20579310
Maureen Kuzik McCutchen
State Bar No. 00784427
2228 Mechanic, Ste 400
P.O. Box 1943
Galveston, Texas 77553-1943
(409) 763-2341
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mmccutchen@millsshirley.com

Attorneys for Amy Ruth Brunsting

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of this document has been sent in the appropriate manner to all known counsel of record on this the 10th day of May, 2013.

Via Certified Mail/RRR
#7009 2250 0004 1808 2299
Ms. Bobbie Bayless
Bayless & Stokes
2931 Ferndale
Houston, TX 77098

Via Certified Mail/RRR
#7009 2250 0004 1808 2305
Ms. Darlene Payne Smith
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, TX 77010

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Exhibit 5a

Notice of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

Emails Summer Peoples re 10/25/2010 phone conference (Candace Curtis Original Affidavit Exhibit 8 PDF pgs. 53-56)

02/20/12 5:27:20 GS

From: Carole Brunsting (cbrunsting@sbcglobal.net)
To: Summer@vacek.com;
Date: Wed, October 13, 2010 8:47:15 AM
Cc: occurtis@sbcglobal.net; at.home3@yahoo.com; akbrunsting@suddenlink.net; candace@vacek.com;
Subject: RE: Brunsting Trust

Summer,
Thank you for your response. Now I understand the nature of the meeting, could you please clarify what you mean by "have no say". I assumed the "say" belonged to our Mother. If I am not understanding that correctly please let me know.
Thanks again,
Carole

--- On **Wed, 10/13/10, Summer Peoples <*Summer@vacek.com*>** wrote:

From: Summer Peoples <Summer@vacek.com>
Subject: RE: Brunsting Trust
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Cc: occurtis@sbcglobal.net, at.home3@yahoo.com, "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candace Freed" <candace@vacek.com>
Date: Wednesday, October 13, 2010, 10:09 AM

Ms. Brunsting:

To answer your questions –

This teleconference meeting is to discuss changes to your mother's trust. If you are unable to attend, it simply means that you will have no say in what changes will be made. It will not be a problem if you cannot attend. However, Mrs. Freed wants to extend the invitation to all Mrs. Brunsting's children.

Thanks,

Summer Peoples, CP

Certified Paralegal

Vacek & Freed, PLLC

14800 St. Mary's Lane, Suite 230

Houston, Texas 77079

Telephone: 281.531.5800

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P-6

02102015:1527:00066

Toll Free: 1.800.229.3002

Facsimile: 281.531.5885

E-mail: summer@vacek.com

IRS CIRCULAR 230 DISCLOSURE: Tax advice contained in this communication (including any attachments) is neither intended nor written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market, or recommend to anyone a transaction or matter addressed in this communication.

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From: Carole Brunsting [mailto:cbrunsting@sbcglobal.net]
Sent: 10/13/2010 9:06 AM
To: Summer Peoples
Subject: Re: Brunsting Trust

Summer,

What is this meeting in reference to? From looking at the time choices available, I may not be able to make the meeting and would like to know if that will be a problem.

Thanks

Carole Brunsting

--- On **Wed, 10/13/10, Summer Peoples <*Summer@vacek.com*>** wrote:

> From: Summer Peoples <Summer@vacek.com>
> Subject: Brunsting Trust
> To: occurtis@sbcglobal.net, "Anita Brunsting" <akbrunsting@suddenlink.net>, cbrunsting@sbcglobal.net, at.home3@yahoo.com
> Cc: "Candace Freed" <candace@vacek.com>
> Date: Wednesday, October 13, 2010, 8:42 AM
>
> Dear Brunsting Family:
>
> Attorney Candace Freed would like to coordinate a teleconference call with you and your mother for sometime next week. Currently, she has the following time slots available (all times are Central Standard Time zone):

17-20360.778

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Exhibit 5b

Notice of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

October 28 2010 Carole email about overhearing Nelva on Phone with Freed telling Freed to "Change it back" and that she was not going to follow the changes Freed had made.

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Thursday, October 28, 2010 9:00 AM
To: Candace Curtis
Subject: Re: One more

Candy,
The more I think about this the whole key is Carl. When I was listening to Mother's call with Candance, Mother told Candace that Carl was trustee, not Anita and was not following the changes Candane was telling her she had made to have Carl removed.. Legally, I wonder if what Candace did was right without consulting Carl or his power of attonery since Carl has always been present at all meetings.

--- On **Thu, 10/28/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: One more
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Thursday, October 28, 2010, 10:34 AM

Candace DOES know she fucked up. That's why she had such a nasty attitude towards both you and I. Anita is smug and Amy plays dumb.

I hope Carl goes home today! If he does I hope the sun is shining. 10 minutes smiling into the sunshine + coffee + the Beatles = a sharper, happy Carl. I have a strong feeling that he will recover in leaps and bounds ALL ON HIS OWN, with support from his wife and family. The fact that Daddy is looking over us gives me strength. I can feel him stronger than ever before.

My suggestion is that when Dr. White finds Mother competent the following should happen:

1. You need to complete your time-line to demonstrate that due to various factors (badgering, low oxygen, Carl's illness, her illness, pneumonia, general stress and worry due to all of this), Mother was incompetent and under extreme duress when she signed everything she signed, particularly the Power of Attorney. We can compose a letter to Candace for Mother to sign, demanding that she wants to have papers drawn up to revoke anything she agreed to between the first of July and now.

2. As Mother gathers strength over the next few weeks she will go to her MD Anderson appointments, etc. and move towards treatment and recovery. I want to stress nutrition, adequate good sleep, and stress-free living.

3. In the meantime she can sell what she needs to, to pay for Robert or Tino or whoever Drina needs to assist her with Carl (if she even needs someone - Carl may recover a lot in a few weeks at home). The cost will be minimal compared to the $100k shithead got to buy her house.

Going forward, Mother will have to tell Candace IN WRITING what she wants done with the trust. You can help her compose the letters. There can be no question when it's in writing. You can assist Mother in reviewing the paperwork before she signs (at home - at her leisure), to make sure all her wishes have been incorporated. This should never be done under the pressure and duress she was subjected to. Mother can take as much time as she needs to read and understand that everything will be as she wants it to be.

The fair and equitable solution in my mind is:

Make all five of us successor co-trustees and require a majority to make any change whatsoever. Then, if Mother steps down there will be no shenanigans. Everything will be transparent and we'll all know everything everyone else knows. That way when Anita wants to sell the farm, or move away from Edward Jones, she can put it up for a vote among us. All five of us are intelligent people and none of us can honestly say we have NEVER made a wrong choice in our lives. This way Mother will be at peace to live out her life, and she will die knowing that she has not pitted one against the other, or given control of one over the other, or played favorites, or been bullied into doing something she didn't really want to do, or would not have done in the first place.

Now this may go AGAINST the norm, or what Candace and her ilk would recommend, but fuck them. They are attorneys who get paid to do what their clients want them to do and they love having to draw up documents. Fees, fees, fees, $$$$$$$$$$$$

If Anita succeeds in her agenda and becomes trustee, we should have her competency tested just to show her what it feels like. If everything stays the way it is right now, that's the first thing I'm going to do when the day comes that she's in charge of me. Na, Na, Na, Na, Na, Na.

Love you,

C

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: occurtis@sbcglobal.net
Sent: Wed, October 27, 2010 9:32:06 PM
Subject: One more

And do not overlook an exploration of the family's motives in requesting a competency evaluation, she cautioned. Do family members have reason for wanting their oddly behaving relative to be declared incompetent?

This is from an article about not rushing to declare and elderly person incompetent.
Mother passes the smell test and I have to make sure Tino does not let her out of the house without her clothes being ironed and SEE!!! MOTHER MADE THE APPOINTMENT TO GET HER HAIR DONE!!! CANDY THAT IS IT!!! MOTHER DOES CARE ABOUT HER APPEARANCE!! She will not go out without her makeup one and I have to get her a nail file all the time. Mother also called Edward Jones on her own and sold $10K so she would have enough money to live on.

She was temporarily incompetent when she was to low on oxygen and if they made her walk to Candace's office I know for a fact her levels were to low because Dr. White joked about it. Tino did not take her so she had to walk from the parking lot to the office. She did not understand what she was signing because she was to short of breath and I can prove that. Candane has to know she F***ed up.

--- On **Wed, 10/27/10, Carole Brunsting <*cbrunsting@sbcglobal.net*>** wrote:

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Subject: Found this
To: occurtis@sbcglobal.net

Date: Wednesday, October 27, 2010, 10:38 PM

There are any number of situations that may cause you to question the competency of a family member to make sound life decisions, such as when:

- An elderly person suddenly changes a will or trust in a manner that is significantly different from all previous wills or trusts, which could result in will litigation if not appropriately handled during the elder's life.
- A family member has suspicion that the elderly person is being unduly influenced by others

Anita is unduly influencing Mother and now Amy has piled on. Mother never would have made these changes on her own. This was all done by the hand of Anita who put herself in charge of everything.

02102015:1527:P0074

From: Carole Brunsting (cbrunsting@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Tue, October 26, 2010 10:12:27 AM
Cc:
Subject: Re:

Oh Candy thank you!!! I feel that I have been fighting this battle with Anita and now Amy alone. Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA's and not AMY's.

--- On **Tue, 10/26/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re:
> To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Tuesday, October 26, 2010, 12:05 PM
>
> I just called Mother. She DID NOT know the full implications of what she signed. I told her Anita had been manipulating her since Daddy passed away. She said she should have been included on the call. She said that she would not have given Anita the authority to manage MY MONEY. I told her that Amy and Anita are conspiring with Candace to have her declared incompetent so they can take CONTROL.
>
> I don't really know what will happen now. I think that the August document should be declared null and void.
>
> After talking to her for at least 30 minutes I realized that she is NOT incompetent. It's her memory that is failing, not her ability to manager her affairs. This happens when people get old. She might not remember to pay a bill, but she knows that bills must be paid. She doesn't remember that I know Carl had encephalitis, but she knows Carl had encephalitis. She has the ability to UNDERSTAND something when it's explained to her, although she might not remember what it is that she understood at the time.
>
> Please change the password on Mother's bank account. Please also tell Mother that Anita checks her bank account to see what she is doing and that she also reads her private emails.
>
> Mother did say that Anita drives her crazy.
>
> Love you,
>
> C
>
> ---
> **From:** Carole Brunsting <cbrunsting@sbcglobal.net>
> **To:** Candace Curtis <occurtis@sbcglobal.net>
> **Sent:** Tue, October 26, 2010 9:34:02 AM
> **Subject:** Re:

P-8

17-20360.783

02102015:1527:P0075

I am glad you wrote because I could not sleep last night either and it is difficult to keep my mind on my work. I went over and over all the events of what has happened since Daddy passed away and Anita has been scheming and manipulating with Mother and even tried to get Carl involved. Candace has not been looking out for Mother's best interest. Candace has been allowing Anita to be the one to strong arm Mother into signing papers when I do not believe she understood what she was signing, she only wanted to shut Anita up.

All Anita was suppose to do or find out was placing Carl's money in medical trust for MOTHER to manage and now all of a sudden Amy is co-trustee and your money is in trust and I wonder about mine as well.

I am working on a time line of how and when all this happened and will show that they pressured Mother to make changes when she A) was accepting the fact that Carl was gravely ill B) she found out she had cancer C) she got pneumonia and was in the hospital D) had Drina breathing down her back because ANITA was to chicken to call Drina back E) had to decide on her own about giving Drina money because ANITA and AMY were to busy to be bothered to call me or Mother back and it is what Mother wanted to do but she knew Anita was going to chastise her for giving her money that was her own to give away as she saw fit. F) also during that time Mother had 2 PET scans, a CT scan and a bron scope for which she was sedated.

Now I understand why Mother kept putting off signing the changes to the Trust. I thought the papers were written only to put Carl's money in trust. I did not know that Amy was replacing Carl and your money was going into trust. I never saw the documents as Candace had them at her office, but Mother kept delaying going over there with various excuses. She was afraid to tell Anita she did not want to make all the changes, but Anita talked her into it.

The closer Anita comes to taking control the comments to me have been: A) it is a good thing I am trustee now and not Carl because you can make more changes to the trust than you realize and Carl would have been making all the decision and had final say over distribution B) she was going to find a way to fold Carl's money back into the trust if Carl died before Drina C) she was taking over all investment when ANITA is the one that moved the money over to this Edwards office that Mother works with and attended all the meetings D) Anita wanted to find out if she could sell the farm as one unit because she said she could get more per acre rather than us each sell our parcels when we wanted too. E) Now I find out that ANITA contacted Carl about a year ago about putting both our money in trust that she and Carl would control and Carl said no.

Candy I am so deeply hurt by all of this and disgusted at the same time. I am so angry with Candace because she allowed all this to happen and it impacts Mother. Amy will just go along with Anita now that her name is on the trust. But if she only knew that ANITA called CPS and they went out and spoke with Amy's neighbors about her kids and spied on her house for a report back to Anita and the report was they did not find any reason to take Jack and Ann. Anita wanted Carl and Drina to adopt them.

I think at this point I need to find an attorney to speak with. Now that Anita sent out the trust documents even though she should not have, Drina will hire a lawyer and this will never see the of day. And she will have Carl's full support.

17-20360.784

02102015:1527:P0076

--- On **Tue, 10/26/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 11:07 AM

Carole,

I promised myself when I hung up from the call that I was through with all of this. I broke my promise all night last night and didn't get a wink of sleep. I cannot let it go. Anita has been manipulating Mother since Daddy passed away. Rather than say "Candy, you are NO LONGER entitled to know anything about any of it" she has been lying and saying she had no idea what was going on. The fact that she has been talking to Candace and pushing for Mother to resign as trustee is truly sick. Now that she and Amy are dead set on having Mother declared incompetent I DON'T WANT THEM TO HAVE CONTROL OF MY SHARE OF THE TRUST. But they do, thanks to Candace, who does not know me from Adam. I don't think Mother realized what she was signing in August. She is not a stupid woman and would certainly understand the intent of the document if anyone explained it to her. THEY DID NOT. If they did explain it to her until she understood, I think she would have had second thoughts.

How dare Candace tell you that if you don't participate in the call you will not have any say in it. YOU DON'T HAVE ANY SAY IN IT ANYWAY. At least Mother and Anita think you're smart enough to be your own trustee.

When Amy and Anita were griping about Edward Jones and I suggested that they write a letter for Mother to sign, Amy ONLY thought that was a good idea. Anita said nothing. SHE WANTS TO GET HER HANDS ON THE MONEY SO SHE CAN DO A BETTER JOB OF INVESTING.

Bottom line. I'm truly scared about my future security and the fact that I have no control whatsoever over my destiny. If that's what Mother intended I would really have liked to hear it from her. I would also like to know what I did that made her feel it was necessary to take such drastic measures without consulting me.

I cannot sleep, I cannot keep my mind on my work, and I cannot get these thoughts out of my head.

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: Candace Curtis <occurtis@sbcglobal.net>
Sent: Mon, October 25, 2010 9:17:05 PM
Subject: Re:

Based on the comments that Anita has been making to me for the past 4 months, I am concerned too, that she wants to see how much control she has.

--- On **Mon, 10/25/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

17-20360.785

02102015:1527:P0077

From: Candace Curtis <occurtis@sbcglobal.net>
Subject:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Monday, October 25, 2010, 6:01 PM

Now the truth comes out. None of us is entitled to copies of the trust documents, since Mother is the only beneficiary. Amy and Anita are trying to take over and will probably do anything and everything they can to cut the rest of us out. I was already depressed today. I'm over the edge now.

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17-20360.786

02102015:1527:P0074

From: Carole Brunsting (cbrunsting@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Tue, October 26, 2010 10:12:27 AM
Cc:
Subject: Re:

Oh Candy thank you!!! I feel that I have been fighting this battle with Anita and now Amy alone. Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA's and not AMY's.

--- On **Tue, 10/26/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 12:05 PM

I just called Mother. She DID NOT know the full implications of what she signed. I told her Anita had been manipulating her since Daddy passed away. She said she should have been included on the call. She said that she would not have given Anita the authority to manage MY MONEY. I told her that Amy and Anita are conspiring with Candace to have her declared incompetent so they can take CONTROL.

I don't really know what will happen now. I think that the August document should be declared null and void.

After talking to her for at least 30 minutes I realized that she is NOT incompetent. It's her memory that is failing, not her ability to manager her affairs. This happens when people get old. She might not remember to pay a bill, but she knows that bills must be paid. She doesn't remember that I know Carl had encephalitis, but she knows Carl had encephalitis. She has the ability to UNDERSTAND something when it's explained to her, although she might not remember what it is that she understood at the time.

Please change the password on Mother's bank account. Please also tell Mother that Anita checks her bank account to see what she is doing and that she also reads her private emails.

Mother did say that Anita drives her crazy.

Love you,

C

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: Candace Curtis <occurtis@sbcglobal.net>
Sent: Tue, October 26, 2010 9:34:02 AM
Subject: Re:

P-8

17-20360.787

02102015:1527:P0075

I am glad you wrote because I could not sleep last night either and it is difficult to keep my mind on my work. I went over and over all the events of what has happened since Daddy passed away and Anita has been scheming and manipulating with Mother and even tried to get Carl involved. Candace has not been looking out for Mother's best interest. Candace has been allowing Anita to be the one to strong arm Mother into signing papers when I do not believe she understood what she was signing, she only wanted to shut Anita up.

All Anita was suppose to do or find out was placing Carl's money in medical trust for MOTHER to manage and now all of a sudden Amy is co-trustee and your money is in trust and I wonder about mine as well.

I am working on a time line of how and when all this happened and will show that they pressured Mother to make changes when she A) was accepting the fact that Carl was gravely ill B) she found out she had cancer C) she got pneumonia and was in the hospital D) had Drina breathing down her back because ANITA was to chicken to call Drina back E) had to decide on her own about giving Drina money because ANITA and AMY were to busy to be bothered to call me or Mother back and it is what Mother wanted to do but she knew Anita was going to chastise her for giving her money that was her own to give away as she saw fit. F) also during that time Mother had 2 PET scans, a CT scan and a bron scope for which she was sedated.

Now I understand why Mother kept putting off signing the changes to the Trust. I thought the papers were written only to put Carl's money in trust. I did not know that Amy was replacing Carl and your money was going into trust. I never saw the documents as Candace had them at her office, but Mother kept delaying going over there with various excuses. She was afraid to tell Anita she did not want to make all the changes, but Anita talked her into it.

The closer Anita comes to taking control the comments to me have been: A) it is a good thing I am trustee now and not Carl because you can make more changes to the trust than you realize and Carl would have been making all the decision and had final say over distribution B) she was going to find a way to fold Carl's money back into the trust if Carl died before Drina C) she was taking over all investment when ANITA is the one that moved the money over to this Edwards office that Mother works with and attended all the meetings D) Anita wanted to find out if she could sell the farm as one unit because she said she could get more per acre rather than us each sell our parcels when we wanted too. E) Now I find out that ANITA contacted Carl about a year ago about putting both our money in trust that she and Carl would control and Carl said no.

Candy I am so deeply hurt by all of this and disgusted at the same time. I am so angry with Candace because she allowed all this to happen and it impacts Mother. Amy will just go along with Anita now that her name is on the trust. But if she only knew that ANITA called CPS and they went out and spoke with Amy's neighbors about her kids and spied on her house for a report back to Anita and the report was they did not find any reason to take Jack and Ann. Anita wanted Carl and Drina to adopt them.

I think at this point I need to find an attorney to speak with. Now that Anita sent out the trust documents even though she should not have, Drina will hire a lawyer and this will never see the of day. And she will have Carl's full support.

17-20360.788

02102015:1527:P0076

--- On **Tue, 10/26/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 11:07 AM

Carole,

I promised myself when I hung up from the call that I was through with all of this. I broke my promise all night last night and didn't get a wink of sleep. I cannot let it go. Anita has been manipulating Mother since Daddy passed away. Rather than say "Candy, you are NO LONGER entitled to know anything about any of it" she has been lying and saying she had no idea what was going on. The fact that she has been talking to Candace and pushing for Mother to resign as trustee is truly sick. Now that she and Amy are dead set on having Mother declared incompetent I DON'T WANT THEM TO HAVE CONTROL OF MY SHARE OF THE TRUST. But they do, thanks to Candace, who does not know me from Adam. I don't think Mother realized what she was signing in August. She is not a stupid woman and would certainly understand the intent of the document if anyone explained it to her. THEY DID NOT. If they did explain it to her until she understood, I think she would have had second thoughts.

How dare Candace tell you that if you don't participate in the call you will not have any say in it. YOU DON'T HAVE ANY SAY IN IT ANYWAY. At least Mother and Anita think you're smart enough to be your own trustee.

When Amy and Anita were griping about Edward Jones and I suggested that they write a letter for Mother to sign, Amy ONLY thought that was a good idea. Anita said nothing. SHE WANTS TO GET HER HANDS ON THE MONEY SO SHE CAN DO A BETTER JOB OF INVESTING.

Bottom line. I'm truly scared about my future security and the fact that I have no control whatsoever over my destiny. If that's what Mother intended I would really have liked to hear it from her. I would also like to know what I did that made her feel it was necessary to take such drastic measures without consulting me.

I cannot sleep, I cannot keep my mind on my work, and I cannot get these thoughts out of my head.

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: Candace Curtis <occurtis@sbcglobal.net>
Sent: Mon, October 25, 2010 9:17:05 PM
Subject: Re:

Based on the comments that Anita has been making to me for the past 4 months, I am concerned too, that she wants to see how much control she has.

--- On **Mon, 10/25/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

17-20360.789

02102015:1527:P0077

From: Candace Curtis <occurtis@sbcglobal.net>
Subject:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Monday, October 25, 2010, 6:01 PM

Now the truth comes out. None of us is entitled to copies of the trust documents, since Mother is the only beneficiary. Amy and Anita are trying to take over and will probably do anything and everything they can to cut the rest of us out. I was already depressed today. I'm over the edge now.

UNOFFICIAL COPY

17-20360.790

Exhibit 5c

Notice of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

Carole's October emails about Mother kept avoiding signing papers (see original complaint exhibits)

02102015:1527:P0074

From: Carole Brunsting (cbrunsting@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Tue, October 26, 2010 10:12:27 AM
Cc:
Subject: Re:

Oh Candy thank you!!! I feel that I have been fighting this battle with Anita and now Amy alone. Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA's and not AMY's.

--- On **Tue, 10/26/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 12:05 PM

I just called Mother. She DID NOT know the full implications of what she signed. I told her Anita had been manipulating her since Daddy passed away. She said she should have been included on the call. She said that she would not have given Anita the authority to manage MY MONEY. I told her that Amy and Anita are conspiring with Candace to have her declared incompetent so they can take CONTROL.

I don't really know what will happen now. I think that the August document should be declared null and void.

After talking to her for at least 30 minutes I realized that she is NOT incompetent. It's her memory that is failing, not her ability to manager her affairs. This happens when people get old. She might not remember to pay a bill, but she knows that bills must be paid. She doesn't remember that I know Carl had encephalitis, but she knows Carl had encephalitis. She has the ability to UNDERSTAND something when it's explained to her, although she might not remember what it is that she understood at the time.

Please change the password on Mother's bank account. Please also tell Mother that Anita checks her bank account to see what she is doing and that she also reads her private emails.

Mother did say that Anita drives her crazy.

Love you,

C

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: Candace Curtis <occurtis@sbcglobal.net>
Sent: Tue, October 26, 2010 9:34:02 AM
Subject: Re:

P-8

17-20360.792

02102015:1527:P0075

I am glad you wrote because I could not sleep last night either and it is difficult to keep my mind on my work. I went over and over all the events of what has happened since Daddy passed away and Anita has been scheming and manipulating with Mother and even tried to get Carl involved. Candace has not been looking out for Mother's best interest. Candace has been allowing Anita to be the one to strong arm Mother into signing papers when I do not believe she understood what she was signing, she only wanted to shut Anita up.

All Anita was suppose to do or find out was placing Carl's money in medical trust for MOTHER to manage and now all of a sudden Amy is co-trustee and your money is in trust and I wonder about mine as well.

I am working on a time line of how and when all this happened and will show that they pressured Mother to make changes when she A) was accepting the fact that Carl was gravely ill B) she found out she had cancer C) she got pneumonia and was in the hospital D) had Drina breathing down her back because ANITA was to chicken to call Drina back E) had to decide on her own about giving Drina money because ANITA and AMY were to busy to be bothered to call me or Mother back and it is what Mother wanted to do but she knew Anita was going to chastise her for giving her money that was her own to give away as she saw fit. F) also during that time Mother had 2 PET scans, a CT scan and a bron scope for which she was sedated.

Now I understand why Mother kept putting off signing the changes to the Trust. I thought the papers were written only to put Carl's money in trust. I did not know that Amy was replacing Carl and your money was going into trust. I never saw the documents as Candace had them at her office, but Mother kept delaying going over there with various excuses. She was afraid to tell Anita she did not want to make all the changes, but Anita talked her into it.

The closer Anita comes to taking control the comments to me have been: A) it is a good thing I am trustee now and not Carl because you can make more changes to the trust than you realize and Carl would have been making all the decision and had final say over distribution B) she was going to find a way to fold Carl's money back into the trust if Carl died before Drina C) she was taking over all investment when ANITA is the one that moved the money over to this Edwards office that Mother works with and attended all the meetings D) Anita wanted to find out if she could sell the farm as one unit because she said she could get more per acre rather than us each sell our parcels when we wanted too. E) Now I find out that ANITA contacted Carl about a year ago about putting both our money in trust that she and Carl would control and Carl said no.

Candy I am so deeply hurt by all of this and disgusted at the same time. I am so angry with Candace because she allowed all this to happen and it impacts Mother. Amy will just go along with Anita now that her name is on the trust. But if she only knew that ANITA called CPS and they went out and spoke with Amy's neighbors about her kids and spied on her house for a report back to Anita and the report was they did not find any reason to take Jack and Ann. Anita wanted Carl and Drina to adopt them.

I think at this point I need to find an attorney to speak with. Now that Anita sent out the trust documents even though she should not have, Drina will hire a lawyer and this will never see the of day. And she will have Carl's full support.

17-20360.793

Exhibit 5-d

Notice of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

Candy and Carole emails October 26, 2010 "Amy and Anita arc trying to take over and will probably do anything and everything they can to cut the rest of us out."

02102015:1527:P0076

--- On **Tue, 10/26/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 11:07 AM

Carole,

I promised myself when I hung up from the call that I was through with all of this. I broke my promise all night last night and didn't get a wink of sleep. I cannot let it go. Anita has been manipulating Mother since Daddy passed away. Rather than say "Candy, you are NO LONGER entitled to know anything about any of it" she has been lying and saying she had no idea what was going on. The fact that she has been talking to Candace and pushing for Mother to resign as trustee is truly sick. Now that she and Amy are dead set on having Mother declared incompetent I DON'T WANT THEM TO HAVE CONTROL OF MY SHARE OF THE TRUST. But they do, thanks to Candace, who does not know me from Adam. I don't think Mother realized what she was signing in August. She is not a stupid woman and would certainly understand the intent of the document if anyone explained it to her. THEY DID NOT. If they did explain it to her until she understood, I think she would have had second thoughts.

How dare Candace tell you that if you don't participate in the call you will not have any say in it. YOU DON'T HAVE ANY SAY IN IT ANYWAY. At least Mother and Anita think you're smart enough to be your own trustee.

When Amy and Anita were griping about Edward Jones and I suggested that they write a letter for Mother to sign, Amy ONLY thought that was a good idea. Anita said nothing. SHE WANTS TO GET HER HANDS ON THE MONEY SO SHE CAN DO A BETTER JOB OF INVESTING.

Bottom line. I'm truly scared about my future security and the fact that I have no control whatsoever over my destiny. If that's what Mother intended I would really have liked to hear it from her. I would also like to know what I did that made her feel it was necessary to take such drastic measures without consulting me.

I cannot sleep, I cannot keep my mind on my work, and I cannot get these thoughts out of my head.

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: Candace Curtis <occurtis@sbcglobal.net>
Sent: Mon, October 25, 2010 9:17:05 PM
Subject: Re:

Based on the comments that Anita has been making to me for the past 4 months, I am concerned too, that she wants to see how much control she has.

--- On **Mon, 10/25/10, Candace Curtis** <*occurtis@sbcglobal.net*> wrote:

17-20360.795

02102015:1527:P0077

From: Candace Curtis <occurtis@sbcglobal.net>
Subject:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Monday, October 25, 2010, 6:01 PM

Now the truth comes out. None of us is entitled to copies of the trust documents, since Mother is the only beneficiary. Amy and Anita are trying to take over and will probably do anything and everything they can to cut the rest of us out. I was already depressed today. I'm over the edge now.

UNOFFICIAL COPY

17-20360.796

Exhibit 5-e

Notice of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

Anita's March 9 2011 email see Candace Curtis Original Affidavit Exhibit 9 p.51Anita's March 9 2011 email see Candace Curtis Original Affidavit Exhibit 9 pg.57

02102015:1527:P0078

From: Candace Curtis (occurtis@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Sat, February 18, 2012 11:29:12 AM
Cc:
Subject: Fw: New Development

----- Forwarded Message ----
From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Tue, March 8, 2011 7:15:32 PM
Subject: RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

P-9

17-20360.798

Exhibit 6

The Original 1996 Brunsting Family Living Trust

THE

BRUNSTING FAMILY

LIVING TRUST

Prepared By

Albert E. Vacek, Jr.

Law Offices of Albert E. Vacek, Jr., P.C.

11757 Katy Freeway Suite 840
Houston, Texas 77079

Telephone: (713) 531-5800

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Article III **Our Right to Amend or Revoke This Trust**

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THE BRUNSTING FAMILY LIVING TRUST

Article I

The Founding of Our Family Living Trust

Section A. Our Declaration of Trust

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY

Second, CARL HENRY BRUNSTING

Third, AMY RUTH TSCHIRHART

A successor Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death or disability. Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the ____ day of _____, 19_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits

which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased

Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

a. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

b. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

c. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan", our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only. Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living

descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any

amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provided otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the

parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the

Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when

the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit by the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when

the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity

serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals,

other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: October 10, 1996

_____
ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On October 10, 1996, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Notary Public, State of Texas

Exhibit 7

The 2005 Restatement of the Family Trust

THE RESTATEMENT OF

THE BRUNSTING FAMILY

LIVING TRUST

Prepared By

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THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Article I

Our Family Living Trust

Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

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during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

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A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

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Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

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Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

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estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

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Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

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Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

1. Minimum Distribution

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

2. Distribution Restrictions

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

3. Exclusion of Older Adopted "Descendants"

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

4. Payment of Estate Taxes of Plan Participant

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

5. Delivery of Trust to Plan Administrator

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

6. Distribution to the Beneficiaries

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

7. Distribution of More Than the Minimum Distribution

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

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Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Section D. Residence Homestead

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

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3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

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Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

17-20880.890

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

1. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

17-23460.891

2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

17-20360.892

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

17-23480.893

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

17-20990.894

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

17-20350.895

3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

17-20360.896

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

17-20350.897

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

17-23540.899

Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

17P20550.900

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

17-20330.903

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

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Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

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Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

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2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Section E. Application to Founders

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

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Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

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Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

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Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

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The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

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by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

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Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

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Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

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as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas

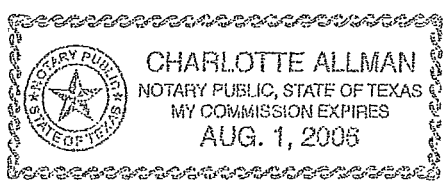

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Exhibit 8

The 2007 Amendment to the Brunsting Family Trust

FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

Elmer H Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Candace L Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

17-20360.950

EXHIBIT "A"

Article IV

Our Trustees

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

17-20950.951

Exhibit 9

Affidavit from Frost Bank re; Amy trying to pawn Carl & Candace inheritances off to frost to avoid accountability

Gene Witter/CFBI
03/29/2012 11:02 AM

To "Bobbie Bayless" <bayless@baylessstokes.com>
cc
bcc
Subject Discovery Affidavit-Brunsting pre-litigation discovery

Dear Bobbie,

I am having this delivered to you today.

Gene Witter
Senior Vice President & Trust Officer
The Frost National Bank
P. O. Box 2845
Houston, Texas 77252
Phone: 713/388-7852 FAX: 713/388-7808

From: Debbie Castillo on 01/24/2012 09:13 AM
To: Wayne Baker/CFBI@CFBI
cc:

While You Were Out

Contact:
Amy Brunsting
of:

Phone: 830-625-8352
FAX:

- ☐ Telephoned
- ☒ Please Call
- ☐ Will Call Again
- ☐ Returned Call
- ☐ Was In
- ☐ Will Return
- ☐ Left Package
- ☐ Please See Me
- ☐ Urgent

Thursday @ 9 a.m.

Message:
Getting ready to set up two managed trusts and needs more information. The trusts will be for her deceased parents - Elmer and Nelva Brunsting.

Amy Ruth Eckhart 50?
Country Ledge Dr.
New Braunfels, TX.

$ 100 - 500

Amy Brunsting
<at.home3@yahoo.com>

01/24/2012 10:17 AM

Please respond to
Amy Brunsting
<at.home3@yahoo.com>

To "wbaker@frostbank.com" <wbaker@frostbank.com>
cc Anita Brunsting <akbrunsting@suddenlink.net>
bcc
Subject Conference call on Thursday am

Wayne,
Thank you for clearing your schedule to speak with my sister and me about the management of the trust accounts for my brother Carl and my sister Candy. I've attached a copy of the trust documents. Please let me know if you need any other information. The trust documents were prepared by Candace Freed at Vasak and Freed.

My sister who is co-trustee is Anita Brunsting. Her phone number is 361-550-7132. My cell phone number is 830-822-2388. As per our conversation, the conference call is scheduled for 9 am on Thursday, Jan. 26.

Regards,
Amy Brunsting

Beneficiary Designation.pdf

NO. 2012-14538

IN RE: CARL HENRY BRUNSTING	§	IN THE DISTRICT COURT OF
	§	
	§	HARRIS COUNTY, TEXAS
	§	
	§	80th JUDICIAL DISTRICT

BUSINESS RECORDS AFFIDAVIT OF THE FROST NATIONAL BANK

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, personally appeared GENE WITTER, who, being duly sworn, deposed as follows:

My name is Gene Witter. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a Senior Vice President & Trust Officer at The Frost National Bank (the "Bank") and in that position, I am a custodian of records for the Bank. Attached hereto are records from the Bank's files which have been marked with page numbers 1 through 39. These pages of records have been kept by the Bank in the regular course of business, and it was the regular course of business of the Bank for an employee or representative of the Bank with knowledge of the act or event recorded to make the record or to transmit information thereof to be included in such record; and the record was made at the time or reasonably soon thereafter. The records attached hereto are exact duplicates of the originals found in the Bank's files.

Gene Witter
AFFIANT

SUBSCRIBED AND SWORN TO before me, on this 29th day of March, 2012, to certify which witness my hand and seal of office.

LINDA MAPP
Notary Public
STATE OF TEXAS
My Comm Exp 10-07-2012

Notary Public, in and for the
State of TEXAS Linda Mapp
Printed Name: Linda Mapp

My Commission Expires: 10/7/2012

P12718

17-20360.956

QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT

Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust

DISTRIBUTION OF TRUST ASSETS

A. Beneficiaries

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

Beneficiaries	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
CARL HENRY BRUNSTING	1/5
ANITA KAY BRUNSTING	1/5

B. Division into Separate Shares

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

1. Share for CANDACE LOUISE CURTIS

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

2. Share for CAROL ANN BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

3. Share for AMY RUTH TSCHIRHART

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

4. Share for CARL HENRY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

5. Share for ANITA KAY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the initial Trust Protector (except as limited by paragraph 4 below) in writing delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). The powers of removal under this paragraph may be limited by the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not

require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:

1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

(i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

(ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

(iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

(iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

(i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

Exhibit 10

Collection of bates stamped copies of the three signature versions of the alleged 8/25/2010 QBD

Signature preceded by CAN

This one only connects to Anita

P229
Attached to Anita's 156 page objection filed December 5, 2014
Can with no Bates stamp (received from Anita on December 21, 2011)

Both signatures are Above the line

This one connects to Carole, Freed & Amy

P192
In Carole's 133 page objection filed Feb. 17, 2015

P7168 V&F000389 Curtis P-76
Vacek & freed production

P12755
Frost Bank document Production given to them by Amy

Both signatures are On the Line

This one connects to Freed and Anita
P443
Obtained by Blackburn from Vacek & Freed

P1015
Copy of P-40_p37 USCA5 was received from Anita Brunsting via email October 23, 2010

P-40_p37 USCA5 Case 4:12-cv-00592 Document 1-13 Filed in TXSD on 02127/12 Page 7 of 20
Attached to Curtis original federal complaint. Exhibit was received from Anita Brunsting via email October 23, 2010

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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Trustee

STATE OF TEXAS
COUNTY OF HARRIS

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MY COMMISSION EXPIRES
MARCH 27, 2011

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NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed

Notary Public, State of Texas

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Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed

Notary Public, State of Texas

EXHIBIT
P-76

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

EXHIBIT
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Exhibit 11a

July 1, 2008 Appointment of successor trustees pdf pages 135-139

7/1/08 Appt of Suc. Trustees

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other

personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on July 1, 2008.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace L Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

4/24/10 Cert of Trust

CERTIFICATE OF TRUST

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

CERTIFICATE OF TRUST
FOR THE
ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is 27-6453100. The Trust is irrevocable and no longer qualifies as a grantor trust.

   An acceptable abbreviation for account titling is as follows:

   NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

Candace L Kunz Freed

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Exhibit 11b

August 25, 2010 Appointment of successor trustees

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and

WHEREAS, ELMER H. BRUNSTING, died on April 1, 2009. The Brunsting Family Living Trust authorized the creation of subsequent subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST. The full legal names of the said subtrusts are:

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

WHEREAS, the said NELVA E. BRUNSTING is desirous of exercising her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical

information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the said Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on August 25, 2010.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace K Kunz Freed
Notary Public, State of Texas

Exhibit 11c

Nelva's alleged 12/21/2010 Resignation

RESIGNATION OF ORIGINAL TRUSTEE

Pursuant to Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended (the "Trust"), I, NELVA E. BRUNSTING, an original Trustee of the Trust may resign as Trustee.

On April 1, 2009, two subtrusts were created under the BRUNSTING FAMILY LIVING TRUST and are known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

I hereby resign as Trustee of these said Trusts in accordance with the provisions contained in Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

My resignation is effective immediately and I hereby appoint ANITA KAY BRUNSTING as the Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as well as the subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

Nelva E. Brunsting

NELVA E. BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:35 p.m., by NELVA E. BRUNSTING.

Candace Lynne Kunz Freed

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Exhibit 11d

12/21/2010 Appointment of Successor Trustees

Law Firm Copy

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and

WHEREAS, ELMER H. BRUNSTING, died on April 1, 2009. The Brunsting Family Living Trust authorized the creation of subsequent subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST. The full legal names of the said subtrusts are:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.
>
> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

WHEREAS, the said NELVA E. BRUNSTING is desirous of exercising her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, resign as Trustee, then the following individuals will serve as successor Trustee in the following order:

> First, ANITA KAY BRUNSTING
> Second, AMY RUTH TSCHIRHART
> Third, THE FROST NATIONAL BANK

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death or disability, then the following individuals will serve as successor Co-Trustees:

> ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to,

protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

17-20480.1025

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries

participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the said Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on December 21, 2010.

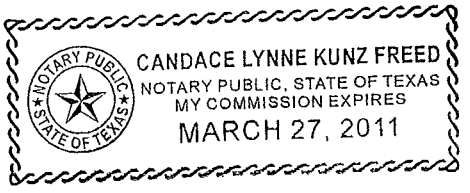
Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:34 pm p.m., by NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace K Kunz Freed
Notary Public, State of Texas



17-24520.1028

Exhibit 11e

Anita December 21, 2010 acceptance of appointment

ACCEPTANCE BY SUCCESSOR TRUSTEE

I, ANITA KAY BRUNSTING, hereby acknowledge my acceptance this day of the office and duties of Successor Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST, after the resignation of the original Trustee, NELVA E. BRUNSTING.

Anita Kay Brunsting
ANITA KAY BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:36pm p.m., by ANITA KAY BRUNSTING.

Candace Kunz-Freed
Notary Public, State of Texas

NOTARY PUBLIC STATE OF TEXAS
CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Exhibit 12

Candace Freed memo: Anita instructing Candace to “change the trust” and make her trustee with Amy followed by Frost Bank 7-30-2010

PM TRUST REVIEW MEETING

Signing Date & Time: Wed. Aug. 4th 2 pm.

Fee: _____

Paid: _____ Mail: _____

Client Name: Brunsting, Nelva

Date: 07/30/10 **Estate Size:** 2 mil ±

IRA: Husband - N/A **Wife -** _____

Current Address/Phone: 13630 Pinerock Hou TX 77079

Date of Trust/Restatement: _____ **Previous Amendments?** Yes.

Subtrust Funding Done previously? Yes. DT & ST.

AMENDMENT: ✓ **QBD(PAT)**✓ ___ **Other** ___ **Instr Ltr** ✓ **HCPOA**✓

✓ **ApptSUCCTee/HIPAA**✓ ___ **ExTPOA** ✓ **COT** ✓ **POA**✓ ___ **DIR**

Anita Kay Riley & Amy Ruth ... Co-tees or Survivor of Them. Then Trust

✓ **Distribution Change (QBD):**

PAT QBD

IF PAT QBD then:

Each beneficiary Trustee of Own Trust: ✓ yes ___ no

except for Carl, Anita & Amee as Co-tees for Carl (except they have Rt to name need to Carl as own Succ Tee)

Distribution of PAT:

Same as LT except need language about the last amend (QBD) also early distrs.

17-20360.1032

_____ **Specific Distribution:**

_____

_____

_____ **Ultimate Distribution:**

_____

_____

_____ **HEALTH CARE DOCUMENTS:**

1ST Agent: Carol

2nd Agent: Anita

3rd Amy

IRA TRUST: _____ **yes** _____ **no** For whom? _____ husband _____ wife

Trustees upon disability of Trustor or spouse: _____

Each beneficiary Trustee of own trust? _____ yes _____ no

_____

_____

_____

_____

SS# of Surviving Spouse/Beneficiaries: _____

17-20360.1033

FUNDING:

Real Estate _____

Which property has NO MORTGAGE? _____

_____ Recording HS Deed

_____ Apply for HS Exemption

Tax-deferred Assets _____

_____ Bank & Brokerage Accounts
_____ Life Insurance
_____ Oil & Gas Interests
_____ Credit Union Accounts
_____ Partnership Interests
_____ CDs
_____ Safe Deposit Box
_____ Stocks and Bonds
_____ Motor Vehicles
_____ Sole Proprietorship Assets
_____ Promissory Notes & Mortgages
_____ Annuities

Additional Documents: _____

_____

NOTES:

Needs new DFPOA -order

Anita

Carol

Amy

Any Name Changes for children? _____ **Any children Predecease?** No.

If Yes, who: _____

17-20360.1034

FEES:

QUOTED: $ _____ (Plus Expenses)

AMOUNT REC'D: None **DATE:** _____

BALANCE DUE: _____

DOCUBANK? _____

Cost Pat QBD 1200.
Hipaa Pkg 250 - med POA
D. F. P. O. A 150.-
Appl. of Succ Tee
New Card.
Courtesy discount. $150.-
Cy

G:\PM Docs\Checklists\5-1 Checklists\PM Trust Review Mtg.wpd

Anita - called

Carl has encephlytes

amendments to trust

Anita + Aimee as Co-Tees

Change list under ME

Carol

Anita

Aimee

financial P.O.a

Anita

Carol

Aimee

Amend to trust /PAT's w/ Aimee Anita to be Co-Tees

to correct Supp Needs to

Sp needs?

17-20360.1036

Exhibit 13

1. Nelva hand written Note: see Candace Curtis (Original Affidavit Exhibit 16) See Exhibit 5 PDF p. 255 this filing

Nelva Brunsting
13630 Pinerock Ln.
Houston, TX 77079

USA44

Candy Curtis,
1215 Victorian Way
Martinez, CA
94553

Wi: Sunday

Its almost 10pm but I'm not sleepy and my computer wont cooperate tonite.

So I heard you were concerned that any money you receive after I "leave this mortal coil" will be put in a trust and Anita would have to deal it out.

That not true. Jaill will get whatever share is yours. If you don't know how to manage Money by now its too late.

I'm on ady pain quite a bit of the time now. Ever sleep with it. The hum of the motor is rather soothing.

Had about 30 or so teachers this evening. Dino took care of taking the goodies out.

Our weather is still gorgeous but so very dry. Glad I'm not a farmer. I'm a farmer are doing better.

I'm watching the World Series. Looks like your guys are winning.

Aren't those odds pretty? Could get them for me.

pax)

get a lap desk. I guess I'm too lazy to sit at the desk. I usually write while watching TV at nite.

Wish I had gave lovely handwriting. I started out left handed but my 1st gr. Teacher made me write right handed so I ~~[illegible]~~ ~~[illegible]~~. blame her.

Hallmark
STATIONERY
CNT3025
© HALLMARK LICENSING, INC.
MADE IN U.S.A.
Hallmark.com

t. I can't even read myown writing.)

Bye now. Love, Mother

Exhibit 14

Candace Freed Nov 17 2010 email regarding the reason Freed demanded Nelva be subjected to an incompetency evaluation

Subject: Fw: Nelva Brunsting
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 3/11/2015 6:24 PM
To: Rik Munson <blowintough@att.net>

On Wednesday, November 17, 2010 2:38 PM, Candace Freed <candace@vacek.com> wrote:

Amy and Family, Thank you for the update on your mom, Nelva Brunsting. The purpose of the conference call and the suggestion that Ms. Brunsting be evaluated was based solely on conversations that I had with Ms. Brunsting and to let you all know that I had concerns based on those conversations. If she has been evaluated by her physician and you as a family are comfortable with his or her diagnosis, then you have addressed the concerns that I had. I appreciate your letting me know the opinion of the doctor. I hope your mom is doing well and she continues to improve.

Please let me know if I can be any further assistance.

Very truly Yours,

Candace L. Kunz-Freed
Attorney at Law

Vacek & Freed, PLLC
14800 St. Mary's Lane, Suite 230
Houston, Texas 77079
Phone: 281.531.5800
Toll-Free: 800.229.3002
Fax: 281.531.5885
E-mail: candace@vacek.com
www.vacek.com

We have moved! Our new office address is as shown above. We are one exit west of our old office building. Exit Dairy Ashford. Turn south on Dairy Ashford. St. Mary's Lane is a side street one block south of I-10 Katy Freeway. Turn west on St. Mary's Lane. Our building is in the northwest corner of the four-way stop.

IRS CIRCULAR 230 DISCLOSURE: Tax advice contained in this communication (including any attachments) is neither intended nor written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market or recommend to anyone a transaction or matter addressed in this communication.
This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged.
This information is confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this electronic message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by reply e-mail or by telephone (800-229-3002), and destroy the original transmission and its attachments without reading them or saving them to disk or otherwise. Thank you.

Exhibit 15

Transcript: Injunction Hearing April 9, 2013 in the federal Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	*	Civil No. H-12-592
	*	
VERSUS	*	Houston, Texas
	*	April 9, 2013
ANITA KAY BRUNSTING, et al	*	9:50 a.m.

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?

MS. CURTIS: Yes, family farm in Iowa.

THE COURT: That was sold?

MS. CURTIS: No, it was not.

THE COURT: What's on the farm that's increasing these prices? What are they harvesting?

MS. CURTIS: Corn and soybean.

THE COURT: Is that for profit or just simply --

MS. CURTIS: To my understanding we have a lease with the farmer.

THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.

MS. CURTIS: Yes.

THE COURT: Those assets or that money goes into the estate?

MS. CURTIS: I believe so.

THE COURT: And that accounts for some of the increase, as you understand them?

MS. CURTIS: Yes.

THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?

MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____
Fred Warner, CSR
Official Court Reporter

Exhibit 16

Notice of Filing of Injunction and Report of Master

DATA-ENTRY PICK UP THIS DATE

FILED
2/6/2015 10:56:10 AM
Stan Stanart
County Clerk
Harris County

02/10/2015:0838:P0134
02/11/2015:1339:P0002

PROBATE COURT 4

CAUSE NO. 412,249-402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files certified copies of an Injunction and Report of Master and would show the Court as follows:

1.

Plaintiff originally filed her Original Petition in the United States District Court for the Souther District of Texas, Houston Division, under Civil Action No. 4:12-CV-592. On April 19, 2013, the United States District Court entered a Memorandum and Order Preliminary Injunction in which it found that Anita Kay Brunsting and Amy Ruth Brunsting as Trustees had failed to act in accordance with the duties required by the Trust and enjoined them from disbursing any funds from any Trust accounts without prior permission of the court. *See* Ex. A, Memorandum and Order Preliminary Injunction. In that same order, the court determined to appoint an independent firm or account to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. *See* Ex A, Memorandum and Order Preliminary Injunction. Ultimately court appointed CPA William G. West filed his Report of Master dated July 31, 2013. *See* Ex. B, Report of Master.

2.

On May 15, 2014, the United States District Court entered an order transferring Civil Action 4:12-CV-00592 into Harris County Probate Court Number Four, Cause Number 412,249. *See* Ex.

Redacted

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C, Remand Order. That Order Granting Remand specifically provided that all ordered rendered by the United States District Court would carry the same force and effect the remand that they would have had if a remand had not been ordered. *See* Ex. C, Remand Order. This Court accepted the United States District Court Order of Remand June 3, 2014. *See* Order of Transfer, Court's file. As such, this Court has accepted the Injunction entered by the United States District Court.

3.

Plaintiff now files Exhibits A and B to make them part of the Court's record, having already been accepted via the May 15, 2014 and June 3, 2014 Remand and Transfer Orders.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Candace Curtis respectfully prays for such further relief to which she may show herself justly entitled.

Respectfully submitted,

ostrommorris, PLLC

BY: _____

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02/12/2015:1839:P0004

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 6th day of February, 2015:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Mr. Bradley Featherston
1155 Dairy Ashford Street, Suite 104
Houston, Texas 77079
281.759.3213
281.759.3214 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124
281.870.1647 (Facsimile)

Jason B. Ostrom/
Nicole Sain Thornton

02/12/2015 13:39 5000 P0005 02/12/2015 08:58 P013/037

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Exhibit A

02102015:0838:P0138

02102015:1359:P0006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By M. Flores
Clerk

CANDACE LOUISE CURTIS,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

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recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

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the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

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presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

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In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

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Exhibit B

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TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Co
By M. Flores
Deputy Clerk

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

IN RE:	§	
	§	
CANDACE LOUISE CURTIS	§	**CIVIL ACTION NO. 4:12-CV-592**
Plaintiff	§	
	§	
VS.	§	
	§	
ANITA KAY BRUNSTING, et al,	§	
Defendants	§	

REPORT OF MASTER

ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST FOR THE PERIOD DECEMBER 21, 2010 THROUGH May 31, 2013

Report of William G. West, CPA
William G. West, P.C.

Dated July 31, 2013

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REPORT OF ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST

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Exhibits

1. Statement of Income/Receipts and Expenses/Distributions for the period December 21, 2010 through May 31, 2013
2. Detail of Accounts for the period December 21, 2010 through May 31, 2013
3. Stock Distribution Analysis

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I. Introduction

On February 27, 2012, Candace Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress, alleging that the Brunsting Defendants acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in the process. On May 9, 2013, the Court ordered the appointment of William G. West as master to perform an accounting. Though the injunction order was signed in April, the master received substantial records through May 31, 2013, and has used that date as the ending date for the report. Therefore, the report covers the time period of December 21, 2010, through May 31, 2013, except for any periods for which information was not received as noted later in this report.

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II. Time Line of Records Received

On or about April 18, 2013, the accounting firm of William G. West, P.C., C.P.A. ("West") was contacted by the court concerning the preparation of the report contained herein since the parties to the suit had not mutually agreed upon the selection of an accountant. After discussing the case with the Judge and a conflict check, West agreed to accept the appointment. West then instructed his attorney to draft and prepare an order appointing him as master to perform an accounting of the income and expenses of the trust since December 21, 2010. This order was signed on May 9, 2013. Shortly thereafter, West reviewed the court docket and read certain pleadings filed in the case. On May 22, 2013, West contacted the attorney for the defendants, Mr. George Vie ("Vie"), to schedule a meeting to discuss the records and the collection of them. On May 29, 2013, West went to Vie's office for the meeting. At the meeting West was given a box of paper records containing bank statements, brokerage statements, statements for dividend reinvestment accounts and tax returns. He was also given a CD which were said to contain pdf copies of most of these records. West was also given a listing of records being turned over and those statements missing or not yet obtained. West was told the missing records were in the process of being obtained. West also requested copies of any electronic accounting or bookkeeping files the defendants may have for the trust. Subsequently, on or about June 4, 2013, West was emailed some Quicken accounting program files which he was able to successfully download and open in order to review. On or about June 6, 2013, West received additional records from Vie. During this time West contacted the plaintiff to discuss the case with her and request copies of any records of the trust she may have in her possession. Towards the end of June, West

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contacted Vie for an update on the status of the receipt of missing records which had yet to be produced. Additional records were promised in the near future. On or about July 1st West received emails from the plaintiff containing pdf copies of various records. West found, that for the most part, he had these records already from Vie (the plaintiff had told West beforehand that most of the records she had, in fact, came from the defendants' attorney, except some her brother had given her). On July 5th Vie sent additional records to West (and pdf copies of same on CD). After review of these records received on July 5th, West sent an email to Vie inquiring as to when additional records would be received. West specifically addressed his concern that there were many bank disbursements for which he had no copies of cancelled checks or paid bill invoices to document said disbursements. On July 15, 2013, West sent another email addressing this same issue and received a letter from Vie in explanation of certain distributions. On July 24, 2013, Vie forwarded several more missing bank statements. Up until the submittal date of this report, West communicated with Vie for clarification on certain deposits or disbursements.

III. Work Performed by Accountants

Upon receipt of the first batch of records from Vie, West had his staff reconcile the paper records received with those in pdf on the CD and with the scheduled listing of records turned over and those not yet turned over. When the Quicken files were received and opened, they were download, reviewed and converted into excel spreadsheets for use by West's staff. It is West's opinion that the Quicken files kept by the defendant(s) were more for use as an electronic checkbook to keep bank balances as opposed to a more fully integrated bookkeeping system. To some extent the Quicken files did serve as

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an outline for the subsequent work done by West. West set up a client account in QuickBooks to serve as an accounting database to compile the income and expense report for the trust. Once the chart of accounts was set up, all of the cash receipt and cash disbursement activity reflected on the Quicken files and bank statements were entered into QuickBooks. Some of the disbursements from the bank accounts did not have cancelled checks associated with the bank statements. A great many disbursements did not have support to document them reflecting the recipient, what was being paid for and the like. West had to rely on descriptions he found in the Quicken records, bank statements or elsewhere in the documents given to him. West has also relied on information/explanations supplied to him in a letter by the defendants' attorney dated July 15, 2013. In summary, West was not given unrelated third party documentation for many of the disbursements run through the bank accounts. The entry of these receipts and disbursements was extremely time consuming; Approximately a thousand entries were made into the QuickBooks database in order to record them. These entries were made only after reviewing related documents provided and ascertaining how best to record the entries. Additionally, paid bills or invoices, if present for reviewing, were compared to the bank disbursements.

West was also given brokerage account statements for three Edward Jones accounts and twelve dividend reinvestment accounts for either Chevron or ExxonMobil. West's staff had to do a reconciliation of monthly or quarterly reports for each account and/or transfers between them. This activity was entered via journal entries. The entry of these stock type accounts was also extremely time consuming, approximately five hundred entries were made into the QuickBooks database in order to record them after a careful

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review and analysis of the respective account statements covering a two and a half year time frame. Numerous work papers were prepared to analyze: 1. transfers between accounts; 2. stock dividends reinvested; and, 3. stocks which were either sold or distributed.

West has used his best judgment in classifying the receipts and disbursements into account categories on the income and expense report. West requested that the defendants provide him with all the accounting information of the trust(s) and he is relying upon the belief they have complied and there are no other available records to be turned over. West has relied on the information given to him and interpreted as best he could. West reserves the right to amend the report as needed as new and additional information becomes available.

IV. Summary of Accounts Reviewed

For the purposes of this Report, the following bank and stock accounts activity for the applicable periods have been recorded for the preparation of the income and expense report contained herein:

Bank of America account # [redacted]-1143

Bank of America account # [redacted]-3523

Bank of America account # [redacted]-8577

Bank of America account # [redacted]-9546

Bank of America account # [redacted]-6643

Bank of America account # [redacted]-3536

Edward Jones account # [redacted]5-1-6

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Edward Jones account # [redacted]6-1-9

Edward Jones account # [redacted]9-1-8

Chevron dividend reinvestment account (Bank of New York)

Chevron dividend reinvestment account # C[redacted]9415

Chevron dividend reinvestment account # C[redacted]9407

Chevron dividend reinvestment account # C[redacted]9423

John Deere dividend reinvestment account

ExxonMobil dividend reinvestment account # C[redacted]0102

ExxonMobil dividend reinvestment account # C[redacted]6261

ExxonMobil dividend reinvestment account # C[redacted]6287

ExxonMobil dividend reinvestment account # C[redacted]7769

ExxonMobil dividend reinvestment account # C[redacted]7777

ExxonMobil dividend reinvestment account # C[redacted]3319

ExxonMobil dividend reinvestment account # C[redacted]3301

V. Report Exceptions and Missing Documents

In our review, we noted that we did not receive copies of approximately thirteen checks. We relied upon other information provided by the defendants to reflect the payee and categorize the type of expense incurred. We were supplied with a limited number of paid bills and invoices supporting many of the disbursements and payments made. Again we relied on the various types of information provided to us to categorize the type of expense paid. We did not receive monthly statements for payments made on a Bank of America credit card. These payments are reflected in summary on the report (Exhibit 1) and also in

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the detail of accounts (Exhibit 2). The categorization of these payments can be amended should the statements and supporting documents be received.

The following account statements were not received and the activity for the periods has not been recorded in the report:

Bank of America checking accounting #[redacted]-9546, 12/14/2011 to 5/31/13.

Edward Jones account #[redacted]5-1-6, 4/26/2013 to 5/31/2013.

Chevron dividend reinvestment account #[redacted]9423 12/31/2011 to 5/31/2013

ExxonMobil dividend reinvestment account #[redacted]6287 9/30/2012 to 5/31/2013

John Deere dividend reinvestment account (summary provided, but no monthly reports)

Met Life dividend reinvestment account (summary provided, but no monthly reports)

VI. Stock Distributed/Dividend Reinvestment Account Information

During the period, a number of Dividend Reinvestment Accounts ("DRP") were maintained. The information we received included accounts with Chevron Corporation ("CVX") shares, Exxon/Mobil Corporation ("XOM") shares, Deere and Company ("DE") shares and MetLife Inc ("MET") shares. When shares were distributed to the beneficiaries or parties in interest, the transaction was accounted for on the QuickBooks database at the fair market value at the time of the distribution or transfer. The fair market value was determined from historical records of stock prices at the close of the date of the transaction. These amounts may or may not be the actual amounts realized by the individuals receiving the stock. Please refer to Exhibit 3 in relation to this section.

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At the beginning of the review period, there were 1,292.2088 shares of CVX and 4,010.20048 shares of XOM according to the records we received. According to account information provided to us 95 shares of MET were attributable to the estate and 9.5807 shares of DE were never transferred to the Nelva Brunsting Survivor's Trust.

During the review period, 675 shares of CVX were transferred as follows:

Anita Brunsting received 135 shares
Ann Brunsting UGMA received 135 shares
Jack Brunsting UGMA received 135 shares
Katie Riley UGMA received 135 shares
Luke Riley received 135 shares.

During the review period, 2,675 shares of XOM were transferred as follows:

Amy Brunsting received 1,120 shares
Carole Brunsting received 1,325 shares
Anita Brunsting received 160 shares
Candy Curtis received 160 shares.

Dividends were reinvested in stocks purchased at the fair market values at the time of the transactions as follows:

CVX shares purchased were 84.83095
XOM shares purchased were 60.51429
DE shares purchased were 0.04946

Partial shares were sold as follows:

XOM shares sold were 0.79847
DE shares sold were 0.9117

612 CVX shares were maintained in an account not under control of Anita Brunsting at the beginning of the review period, but were eventually transferred into the main CVX DRP account. A final accounting of 37.131 shares of CVX stock could not be determined since reports after 12/31/2011 were unavailable for one of the DRP accounts.

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4.42786 shares of XOM were unaccounted for because reports after 9/30/2012 were unavailable from one of the DRP accounts.

95 shares of MET were attributed to the trust information, however the only reports reflecting information on these shares were dated late in the review period and did not show whether the shares were available to the estate at the beginning of the period.

Only 0.04946 shares of DE were attributed to the estate at the end of the period. No reports reflected the balance as of the beginning of the period and 8.669 shares were not accounted for during the period.

At the end of the review period, 1,276.88344 shares of CVX, 1,300.25643 shares of XOM, 0.04946 shares of DE and 95 shares of MET were available to the trust.

VII. Comments on Certain Accounts

In the Income/Receipts section of the report there are accounts titled *Long Term Capital Gains– Funds and Short Term Capital Gains– Funds.* These amounts do not represent sales made by the Trust, per se, but rather sales of securities made by stock or bond funds held in the Trust accounts and then passed on to the Trust.

In the Expense/Distributions section of the report there is an account titled *Cash/Check to Family Members*. This account represents cash, checks, electronic fund transfers paid or sent to family members or payments made for the benefit of family members, as best as West could ascertain. In Exhibit 2, the detail of accounts, there is a

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listing of the payments found that fit this account category. In the information provided to West, *many* of the payments are noted as *reimbursement* to family members for expenses (trustee fees, legal fees, repairs, work performed, etc.) incurred on behalf of the trust and are noted as such in the memo section of the detail of accounts. Also the July 15, 2013, letter from Vie in explanation of certain distributions is referenced here in regard to certain distributions. It is important to note this section lists distributions out of bank accounts to or for the benefit of family members. It does not list distributions of stock which are listed separately in the last section of the Statement of Income/Receipts and Expenses/Distributions and the related Section VI above and in Exhibit 3.

An account titled *Payments to Credit Cards* is included in the Expense/Distributions section of the report. This account reflects payments made on credit cards for which we could not find supporting documentation *or* ascertain how the amounts should be allocated to other Expense/Disbursement accounts. Section V above addresses Bank of America credit card payments and lack of statements and supporting documents. There were also payments to a Bluebonnet credit card account (also referenced as "Cardmember Services" in information given to us), for which we were given monthly statements and some supporting documentation. Due to the general lack of supporting documents for these payments they have been placed into this account.

VIII. Summation

In this case I have been asked to prepare an accounting to help the Court consider the issues in dispute. I have undertaken an analysis of the books and records provided to me. It

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is my belief that all my requests for information from the various parties were reasonable and that I made it clear I wanted all available records. This report has been based on all records received to date. The report can be amended should additional records be received if so directed by the Court. This report has been made in good faith.

Respectfully submitted on this 31st day of July, 2013.

William G. West

William H West

12345 Jones Rd., Suite 120
Houston, TX 77070

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EXHIBIT 1

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Brunsting Family Living Trust

Statement of Income/Receipts & Expenses/Disbursements

December 21, 2010 through May 31, 2013

Income/Receipts	
Farm/Rental Income	$127,790.41
Investment Income	
Dividend Income	28,321.46
Interest Income	3,085.05
Long Term Capital Gains - Funds	1,047.31
Short Term Capital Gains- Funds	489.10
Stock Sales less Broker Fees	183,662.79
Total Investment Income	216,605.71
Miscellaneous Income	6,460.73
Pension Income	8,303.58
Proceeds from Sale of Home	433,392.05
Social Security Income	17,800.00
Tax Refunds	19,816.87
Total Income/Receipts	830,169.35
Expenses/Disbursements	
Automobile Expense	2,965.76
Bank & Brokerage Charges	8,540.62
Checks/Cash to Family Members	108,924.91
Dues and Subscriptions	278.47
Food/Dining/Groceries	5,958.67
Funeral	3,556.29
Household	1,237.20
Insurance Expense	4,737.88
Lawn Care	1,262.00
Legal Fees	36,312.44
Medical Expenses	
In Home Care	119,232.61
Medical Supplies	65.47
Medical Expenses - Other	2,568.98
Total Medical Expenses	121,867.06
Miscellaneous Expenses	6,753.72
Office Supplies	63.70
Payments to Credit Cards	
Bank of America Credit Cards	14,042.99
Bluebonnet Credit Union Cred Cd	11,986.96
Total Payments to Credit Cards	26,029.95

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Brunsting Family Living Trust

Statement of Income/Receipts & Expenses/Disbursements

December 21, 2010 through May 31, 2013

Personal Care	798.14
Pet Care	
Pet Food and Supplies	69.68
Veterinary Expenses	1,976.24
Total Pet Care	2,045.92
Postage	78.15
Professional Fees	7,563.86
Repairs and Maintenance	783.31
Supplies	29.83
Taxes	
Taxes - Federal	53,416.00
Taxes - Property	9,811.99
Taxes - State	4,793.00
Total Taxes	68,020.99
Telephone Expense	4,519.17
Utilities	
Cable TV	776.41
Electricity	2,259.90
Gas	942.66
Water	2,537.22
Total Utilities	6,516.19
Total Expenses/Disbursements	418,844.23
Net of Income/Receipts & Expenses/Disbursements	411,325.12
Less Stock Distributed to Family Members	
Value of Stock Transferred Out	298,976.80
Net of Income/Receipts & Expenses/Disbursements Less Value of Stock Distributed	**$112,348.32**

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EXHIBIT 2

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Ordinary Income/Expense							
Income							
Farm/Rental Income							
General Journal	3/1/2011	EJ20120458		Invest inc - Farm	Nelva	15,540.40	15,540.40
General Journal	9/29/2011	EJ20120476		Farm Inc - Invest inc	Nelva	15,510.00	31,050.40
General Journal	10/5/2012	EJ20120442		Farm Rent	Elmer	26,437.50	57,487.90
General Journal	1/11/2013	EJ20120437		Farm Rent	Elmer	13,902.51	71,390.41
General Journal	3/2/2013	EJ20120450		Farm Rent	Elmer	29,962.50	101,352.91
General Journal	3/5/2013	EJ20120438		Farm Rent	Elmer	26,437.50	127,790.41
Total Farm/Rental Income						127,790.41	127,790.41
Investment Income							
Dividend Income							
General Journal	12/21/2010	EJ20101223		Dividends on Capital Income Builder Fund A	Survivor	60.19	60.19
General Journal	12/22/2010	EJ20101212		Dividends on Dodge & Cox Intl Stock Fund	Elmer	368.36	428.55
General Journal	12/22/2010	EJ20101212		Dividends on Dodge & Cox Income Fund	Elmer	325.77	754.32
General Journal	12/27/2010	EJ20101213		Dividend on Investment Co of America Cl F1	Elmer	112.43	866.75
General Journal	12/27/2010	EJ20101213		Dividend on Pioneer Fund Cl Y	Elmer	62.73	929.48
General Journal	12/28/2010	EJ20101214		Dividend on New World Fund Cl F1	Elmer	77.32	1,006.80
General Journal	12/30/2010	EJ20101215		Dividend on Oppnhmr Cmd Strat Tll Rtn Cl Y	Elmer	200.58	1,207.38
General Journal	12/31/2010	EJ20101216		Dividend from Oppenheimer Intl Bond Fund Y	Elmer	33.39	1,240.77
General Journal	12/31/2010	EJ20101216		Dividend on Money Market	Elmer	0.01	1,240.78
General Journal	1/3/2011	EJ20110105		Dividends Reinvested in Fed Money Market Instl Cl	Elmer	0.05	1,240.83
General Journal	1/3/2011	EJ20110105		Dividends Reinvested in DWS Small Cap Value Fund Instl	Elmer	4.39	1,245.22
General Journal	1/3/2011	EJ20110105		Dividends Reinvested in ING Global Real Estate Fund I	Elmer	146.39	1,391.61
General Journal	1/3/2011	EJ20110105		Dividends Reinvested in JPMorgan Core Bond Fund	Elmer	78.79	1,470.40
General Journal	1/3/2011	EJ20110105		Dividends Reinvested in JP Morgan High Yield Fd	Elmer	35.40	1,505.80
General Journal	1/3/2011	EJ20110105		Dividends Reinvested in T Rowe Price New Inc Fd	Elmer	73.83	1,579.63
General Journal	1/28/2011	EJ20110128		Dividends on Dow Chemical Co	Survivor	24.60	1,604.23
General Journal	1/31/2011	EJ20110130		Dividends on Stryker Corp	Survivor	33.51	1,637.74
General Journal	2/1/2011	EJ 20110201		Dividends on Deere & Co Stk	Survivor	573.65	2,211.39
General Journal	2/1/2011	EJ20110201		Dividends from JPMorgan Core Bond Fund	Elmer	75.01	2,286.40
General Journal	2/1/2011	EJ20110201		Dividends from JPMorgan High Yield Fund	Elmer	31.82	2,318.22
General Journal	2/1/2011	EJ20110201		Dividends from Oppenheimer Intl Bond Fund	Elmer	26.65	2,344.87
General Journal	2/1/2011	EJ20110201		Dividends from T Rowe Price New Income Fund	Elmer	63.83	2,408.70
General Journal	3/1/2011	EJ20110301		Dividends on JPMorgan Core Bond Fund	Elmer	73.22	2,481.92
General Journal	3/1/2011	EJ20110301		Dividends on JPMorgan High YieldFd	Elmer	28.77	2,510.69
General Journal	3/1/2011	EJ20110301		Dividends on Oppenheimer Intl Bond Fund Y	Elmer	25.14	2,535.83
General Journal	3/1/2011	EJ20110301		Dividends on T Rowe Price New Income Fund	Elmer	66.69	2,602.52
General Journal	3/7/2011	EJ20110304		Dividend on Investment Co of America Cl F1	Elmer	81.32	2,683.84
General Journal	3/10/2011	EJ20110321		Dividends on Chevron Corp	Survivor	66.96	2,750.80
General Journal	3/11/2011	DR12110301		Dividends on Chevron Stock	Family	930.39	3,681.19
General Journal	3/21/2011	EJ20110322		Dividends on Capital Income Builder Fund A	Survivor	40.69	3,721.88
General Journal	3/25/2011	EJ20110307		Dividends on Columbia Mid Cap Value Fd Cl Z	Elmer	5.86	3,727.74
General Journal	3/25/2011	EJ20110307		Dividends on DWS Small Cap Value Fund Instl	Elmer	29.55	3,757.29
General Journal	3/25/2011	EJ20110307		Dividends on Pioneer Fund Cl Y	Elmer	55.34	3,812.63
General Journal	3/28/2011	EJ20110309		Dividends From Thornburg Invt Value Fd	Elmer	4.67	3,817.30
General Journal	3/29/2011	EJ20110310		Dividends from Dodge & Cox Income Fund	Elmer	273.60	4,090.90
General Journal	3/30/2011	EJ20110311		Dividends on T Rowe Price Equity Fd	Elmer	68.64	4,159.54
General Journal	4/1/2011	EJ20110401		Dividends on JPMorgan Core Bond Fund	Elmer	75.49	4,235.03
General Journal	4/1/2011	EJ20110401		Dividends on JPMorgan High Yield Fd	Elmer	33.22	4,268.25
General Journal	4/1/2011	EJ20110401		Dividends on Oppenheimer Intl Bond Fund	Elmer	26.87	4,295.12
General Journal	4/1/2011	EJ20110401		Dividends on T Rowe Price New Income Fund	Elmer	66.69	4,361.81
General Journal	4/4/2011	EJ20110402		Dividends on ING Global Real Estate Fund I	Elmer	54.86	4,416.67
General Journal	4/29/2011	EJ20110425		Dividends on Stryker Corp	Survivor	33.62	4,450.29
General Journal	4/29/2011	EJ20110425		Dividends on Dow Chemical Corp	Survivor	24.60	4,474.89
General Journal	5/2/2011	EJ20110501		Dividends on Deere & Co	Survivor	435.05	4,909.94
General Journal	5/2/2011	EJ20110501		Dividends on JPMorgan Core Bond Fund	Elmer	73.68	4,983.62
General Journal	5/2/2011	EJ20110501		Dividends on JPMorgan High Yield Fd Select	Elmer	34.05	5,017.67
General Journal	5/2/2011	EJ20110501		Dividends on Oppenheimer Intl Bond Fund Y	Elmer	27.64	5,045.31
General Journal	5/2/2011	EJ20110501		Dividends on T Rowe Price New Income Fund	Elmer	72.37	5,117.68
General Journal	6/1/2011	EJ20110601		Dividends on JPMorgan Core Bond Fund	Elmer	75.94	5,193.62
General Journal	6/1/2011	EJ20110601		Dividends on JPMorgan High Yield Fund	Elmer	33.56	5,227.18
General Journal	6/1/2011	EJ20110601		Dividends on Oppenheimer Intl Bond Fund	Elmer	26.54	5,253.72
General Journal	6/1/2011	EJ20110601		Dividends on T Rowe Price New Income Fund	Elmer	66.95	5,320.67
General Journal	6/10/2011	EJ20110622		Dividend Reinvestment on XOM Stk 7777	Survivor	461.53	5,782.20
General Journal	6/10/2011	EJ20110622		Dividend Reinvestment on CVX Stk	Nelva	547.75	6,329.95
General Journal	6/10/2011	EJ20110622		Dividend Reinvestment on CVX Stk 9415	Elmer	461.45	6,791.40
General Journal	6/13/2011	EJ20110602		Dividends on Investment Co of America Cl F1	Elmer	81.34	6,872.74
General Journal	6/23/2011	EJ20110603		Dividends on Columbia Mid Cap Value Fd Cl Z	Elmer	13.58	6,886.32
General Journal	6/24/2011	EJ20110605		Dividends on Pioneer Fund	Elmer	70.20	6,956.52
General Journal	6/28/2011	EJ20110608		Dividends on Dodge & Cox Income Fund	Elmer	264.88	7,221.40
General Journal	6/29/2011	EJ20110609		Dividends on T Rowe Price Equity Income Fd	Elmer	83.36	7,304.76
General Journal	7/1/2011	EJ20110701		Dividends on JPMorgan Core Bond Fund Select	Elmer	71.68	7,376.44
General Journal	7/1/2011	EJ20110701		Dividends on JPMorgan High Yield Fd Select	Elmer	30.38	7,406.82
General Journal	7/1/2011	EJ20110701		Dividends on Oppenheimer Intl Bond Fund	Elmer	27.12	7,433.94
General Journal	7/1/2011	EJ20110701		Dividends on T Rowe Price New Income Fund	Elmer	70.47	7,504.41
General Journal	7/5/2011	EJ20110702		Dividends on ING Global Real Estate Fund I	Elmer	52.94	7,557.35
General Journal	8/1/2011	EJ20110801		Dividends on Deere & Co	Survivor	254.20	7,811.55
General Journal	8/1/2011	EJ20110801		Dividends on JPMorgan Core Bond Fund Select	Elmer	69.82	7,881.37
General Journal	8/1/2011	EJ20110801		Dividends on JPMorgan High Yield Fd Select	Elmer	31.82	7,913.19
General Journal	8/1/2011	EJ20110801		Dividends on Oppenheimer Intl Bond Fund Y	Elmer	27.92	7,941.11
General Journal	8/1/2011	EJ20110801		Dividends on T Rowe Price New Income Fund	Elmer	69.49	8,010.60
General Journal	9/1/2011	EJ20110901		Dividends on JPMorgan Core Bond Fund Select	Elmer	73.97	8,084.57
General Journal	9/1/2011	EJ20110901		Dividends on JPMorgan High Yield Fd Select	Elmer	32.63	8,117.20
General Journal	9/1/2011	EJ20110901		Dividends on Oppenheimer Intl Bond Fund Y	Elmer	25.71	8,142.91
General Journal	9/1/2011	EJ20110901		Dividends on T Rowe Price New Income Fund	Elmer	70.82	8,213.73
General Journal	9/9/2011	EJ20110136		Exxon Invest Inc	Survivor	274.01	8,487.74

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Type	Date	Num	Name	Memo	Class	Amount	Balance
General Journal	9/9/2011	EJ20110921		Dividend Reinvestment of XOM Stk 7777	Survivor	313.80	8,801.54
General Journal	9/9/2011	EJ20110921		Dividend Reinvestment of Chevron Stk	Nelva	28.50	8,830.04
General Journal	9/9/2011	EJ20110921		Dividend Reinvestment of Chevron Stk 9415	Elmer	465.04	9,295.08
General Journal	9/19/2011	EJ20110904		Dividends on Investment Co of America Cl F1	Elmer	83.95	9,379.03
General Journal	9/23/2011	EJ20110908		Dividend on Pioneer Fund Cl Y	Elmer	78.19	9,457.22
General Journal	9/27/2011	EJ20110907		Dividends on Columbia Mid Cap Value Fd Cl Z	Elmer	14.76	9,471.98
General Journal	9/28/2011	EJ20110909		Dividends on Dodge & Cox Income Fund	Elmer	186.06	9,658.04
General Journal	9/29/2011	EJ20110910		Dividends on T Rowe Price Equity Income Fd	Elmer	88.37	9,746.41
General Journal	10/3/2011	EJ20111001		Dividends on JPMorgan Core Bond Fund Select	Elmer	42.25	9,788.66
General Journal	10/3/2011	EJ20111001		Dividends on JPMorgan High Yield Fd Select	Elmer	28.14	9,816.80
General Journal	10/3/2011	EJ20111001		Dividends on Oppenheimer Intl Bond Fund Y	Elmer	26.16	9,842.96
General Journal	10/3/2011	EJ20111001		Dividends on Pimco Tot Ret Fd IV Inst Cl	Elmer	2.25	9,845.21
General Journal	10/3/2011	EJ20111001		Dividends on T Rowe Price New Income Fund	Elmer	65.22	9,910.43
General Journal	10/4/2011	EJ20111002		Dividends on ING Global Real Estate Fund I	Elmer	49.75	9,960.18
General Journal	10/4/2011	EJ20111002		Dividends on Loomis Sayles Invt Grade Bd Y	Elmer	27.14	9,987.32
General Journal	11/1/2011	EJ20111101		Dividends on Deere & Co	Survivor	254.20	10,241.52
General Journal	11/1/2011	EJ20111101		Dividends on JPMorgan Core Bond Fund Select	Elmer	42.38	10,283.90
General Journal	11/1/2011	EJ20111101		Dividends on JPMorgan High Yield Fd Select	Elmer	27.09	10,310.99
General Journal	11/1/2011	EJ20111101		Dividends on Oppenheimer Intl Bond Fund Y	Elmer	22.68	10,333.67
General Journal	11/1/2011	EJ20111101		Dividends on Pimco Tot Ret Fd IV Inst Cl	Elmer	10.42	10,344.09
General Journal	11/1/2011	EJ20111101		Dividends on T Rowe Price New Income Fund	Elmer	50.00	10,394.09
General Journal	11/2/2011	EJ20111102		Dividends on Loomis Sayles Invt Grade Bd Y	Elmer	28.43	10,422.52
General Journal	12/1/2011	EJ20111212		Dividend on JP Morgan Core Bond	Elmer	40.15	10,462.67
General Journal	12/1/2011	EJ20111212		Dividend on JP Morgan High Yield	Elmer	29.67	10,492.34
General Journal	12/1/2011	EJ20111212		Dividend on Oppenheimer Intl Bd	Elmer	23.27	10,515.61
General Journal	12/1/2011	EJ20111212		Dividend on Pimco Total Return IV	Elmer	13.84	10,529.45
General Journal	12/1/2011	EJ20111212		Dividend on T Rowe Price New Income	Elmer	50.92	10,580.37
General Journal	12/2/2011	EJ20111213		Dividend on Loomis Sayles Inv Grade Bd	Elmer	28.43	10,608.80
General Journal	12/8/2011	EJ20110152		Exxon Div Income	Survivor	274.01	10,882.81
General Journal	12/9/2011	EJ20111215		Dividend on MFS Research International	Elmer	335.71	11,218.52
General Journal	12/9/2011	EJ20111221		Dividend Reinvestment of XOM Stk 7777	Survivor	315.83	11,534.35
General Journal	12/9/2011	EJ20111221		Dividend Reinvestment of Chevron Stk	Nelva	29.84	11,564.19
General Journal	12/9/2011	EJ20111221		Dividend Reinvestment of Chevron Stk 9415	Elmer	487.02	12,051.21
General Journal	12/13/2011	EJ20111216		Dividend on Columbia Mid Cap Value	Elmer	26.01	12,077.22
General Journal	12/14/2011	EJ20111217		Dividend on T Rowe Price Equity Income	Elmer	95.96	12,173.18
General Journal	12/20/2011	EJ20111220		Dividend on DWS Small Cap Value	Elmer	66.58	12,239.76
General Journal	12/21/2011	EJ20111221		Dividend on Dodge & Cox Intl Stock	Elmer	580.68	12,820.44
General Journal	12/21/2011	EJ20111221		Dividend on Dodge & Cox Income	Elmer	196.04	13,016.48
General Journal	12/22/2011	EJ20111222		Dividend on Oppengeimer Common Strat Total Ret	Elmer	285.22	13,301.70
General Journal	12/23/2011	EJ20111223		Dividend on Investment Co of America	Elmer	116.38	13,418.08
General Journal	12/23/2011	EJ20111223		Dividend on Pioneer Fund	Elmer	95.42	13,513.50
General Journal	12/27/2011	EJ20111224		Dividend on Thornburg Value	Elmer	7.84	13,521.34
General Journal	12/28/2011	EJ20111225		Dividend on Loomis Sayles Inv Grade Bd	Elmer	67.05	13,588.39
General Journal	12/28/2011	EJ20111225		Dividend on New World	Elmer	73.75	13,662.14
General Journal	12/30/2011	EJ20111226		Dividend on Oppenheimer Intl Bd	Elmer	118.46	13,780.60
General Journal	1/3/2012	EJ20120102		Dividends on JP Morgan Fed Money Mkt	Elmer	0.03	13,780.63
General Journal	1/3/2012	EJ20120102		Dividends on ING Global Real Estate	Elmer	39.90	13,820.53
General Journal	1/3/2012	EJ20120102		Dividends on JP Morgan Core Bond	Elmer	41.21	13,861.74
General Journal	1/3/2012	EJ20120102		Dividends on JP Morgan High Yield	Elmer	30.00	13,891.74
General Journal	1/3/2012	EJ20120102		Dividends on JP Pimco Total Return IV	Elmer	13.97	13,905.71
General Journal	1/3/2012	EJ20120102		Dividends on T Rowe Price New Income	Elmer	57.12	13,962.83
General Journal	1/10/2012	EJ20120104		Dividends on Pimco Total Return IV	Elmer	2.85	13,965.68
General Journal	2/1/2012	EJ20120201		Dividends on JPMorgan Core Bond Select Cl	Elmer	37.79	14,003.47
General Journal	2/1/2012	EJ20120201		Dividends on JPMorgan High Yield Select Cl	Elmer	25.27	14,028.74
General Journal	2/1/2012	EJ20120201		Dividends on Oppenheimer Intle Bd	Elmer	25.02	14,053.76
General Journal	2/1/2012	EJ20120201		Dividends on Pimco Total Return IV INst Cl	Elmer	15.86	14,069.62
General Journal	2/1/2012	EJ20120201		Dividends on T Rowe Price New Income	Elmer	47.63	14,117.25
General Journal	2/2/2012	EJ20120202		Dividends on Loomis Sayles Inv Grade Bd Y	Elmer	27.89	14,145.14
General Journal	3/1/2012	EJ20120301		Dividends on JP Morgan Core Bond Select Cl	Elmer	36.71	14,181.85
General Journal	3/1/2012	EJ20120301		Dividends on JP Morgan High Yield Select Cl	Elmer	27.26	14,209.11
General Journal	3/1/2012	EJ20120301		Dividends on Oppenheimer Intl Bd	Elmer	23.99	14,233.10
General Journal	3/1/2012	EJ20120301		Dividends on Pimco Total Return IV Inst Cl	Elmer	17.35	14,250.45
General Journal	3/1/2012	EJ20120301		Dividends on T Rowe Price New Income	Elmer	49.53	14,299.98
General Journal	3/2/2012	EJ20120302		Dividends on Loomis Sayles Inv Grade Bd Y	Elmer	27.36	14,327.34
General Journal	3/7/2012	EJ20110154		Exxon div income	Survivor	274.01	14,601.35
General Journal	3/9/2012	EJ20120321		Dividend Reinvestment of XOM Stk 7777	Survivor	317.68	14,919.03
General Journal	3/9/2012	EJ20120321		Dividend Reinvestment of CVX Stk 9415	Survivor	490.82	15,409.85
General Journal	3/15/2012	EJ20120304		Dividends on Investment Co of America	Elmer	78.17	15,488.02
General Journal	3/23/2012	EJ20120305		Dividends on Pioneer Fund	Elmer	77.25	15,565.27
General Journal	3/26/2012	EJ20120306		Dividends on Columbia Mid Cap Value	Elmer	10.25	15,575.52
General Journal	3/28/2012	EJ20120307		Dividends on Dodge & Cox Income	Elmer	189.13	15,764.65
General Journal	3/28/2012	EJ20120307		Dividends on T Rowe Price Equity	Elmer	93.48	15,858.13
General Journal	4/2/2012	EJ20120401		Dividends on JP Morgan Core Bond	Elmer	37.99	15,896.12
General Journal	4/2/2012	EJ20120401		Dividends on JP Morgan High Yield	Elmer	28.66	15,924.78
General Journal	4/2/2012	EJ20120401		Dividends on Oppenheimer Intl Bd	Elmer	27.30	15,952.08
General Journal	4/2/2012	EJ20120401		Dividends on Pimco Total Return IV	Elmer	17.89	15,969.97
General Journal	4/2/2012	EJ20120401		Dividends on T Rowe Price New Income	Elmer	51.76	16,021.73
General Journal	4/3/2012	EJ20120402		Dividends on ING Global Real Estate	Elmer	42.05	16,063.78
General Journal	4/3/2012	EJ20120402		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.75	16,091.53
General Journal	5/1/2012	EJ20120501		Dividends on JP Morgan Core Bond	Elmer	34.52	16,126.05
General Journal	5/1/2012	EJ20120501		Dividends on JP Morgan High Yield	Elmer	23.81	16,149.86
General Journal	5/1/2012	EJ20120501		Dividends on Oppenheimer Intl Bd	Elmer	22.93	16,172.79
General Journal	5/1/2012	EJ20120501		Dividends on Pimco Total Return IV	Elmer	14.59	16,187.38
General Journal	5/1/2012	EJ20120501		Dividends on T Rowe Price New Income	Elmer	47.45	16,234.83
General Journal	5/2/2012	EJ20120502		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.39	16,262.22
General Journal	6/1/2012	EJ20120601		Dividends on JP Morgan Core Bond	Elmer	33.99	16,296.21
General Journal	6/1/2012	EJ20120601		Dividends on Mainstay High Yield Corp Bd	Elmer	57.74	16,353.95
General Journal	6/1/2012	EJ20120601		Dividends on Oppenheimer Intl Bd	Elmer	24.63	16,378.58

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Type	Date	Num	Name	Memo	Class	Amount	Balance
General Journal	6/1/2012	EJ20120601		Dividends on Pimco Total Return IV	Elmer	15.12	16,393.70
General Journal	6/1/2012	EJ20120601		Dividends on T Rowe Price New Income	Elmer	50.82	16,444.52
General Journal	6/4/2012	EJ20120602		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.34	16,471.86
General Journal	6/11/2012	EJ20120604		Dividends on Investment Co of America	Elmer	52.65	16,524.51
General Journal	6/11/2012	EJ20120621		Dividends Reinvested in XOM Stk 7769	Elmer	332.31	16,856.82
General Journal	6/11/2012	EJ20120621		Dividends Reinvested in XOM Stk 7777	Survivor	387.38	17,244.20
General Journal	6/11/2012	EJ20120621		Dividends Reinvested in CVX Stk 9415	Elmer	549.72	17,793.92
General Journal	6/11/2012	EJ20120621		Dividends Reinvested in CVX Stk 9407	Elmer	101.37	17,895.29
General Journal	6/18/2012	EJ20120605		Dividends on Capital World Growth & Income	Elmer	147.46	18,042.75
General Journal	6/22/2012	EJ20120606		Dividends on Pioneer Fund	Elmer	53.57	18,096.32
General Journal	6/25/2012	EJ20120607		Dividends on Columbia Mid Cap Value	Elmer	31.55	18,127.87
General Journal	6/27/2012	EJ20120609		Dividends on Capital World Bond	Elmer	30.40	18,158.27
General Journal	6/27/2012	EJ20120609		Dividends on Dodg & Cox Income	Elmer	128.94	18,287.21
General Journal	6/28/2012	EJ20120610		Dividends on T Rowe Price Equity Income	Elmer	96.35	18,383.56
General Journal	6/29/2012	EJ20120611		Dividends on Mainstay High Yield Corp Bd	Elmer	58.09	18,441.65
General Journal	7/2/2012	EJ20120701		Dividends on JP Morgan Core Bond	Elmer	32.90	18,474.55
General Journal	7/2/2012	EJ20120701		Dividends on Oppenheimer Intl Bd	Elmer	17.05	18,491.60
General Journal	7/2/2012	EJ20120701		Dividends on Pimco Total Return IV	Elmer	14.25	18,505.85
General Journal	7/2/2012	EJ20120701		Dividends on T Rowe Price New Income	Elmer	46.81	18,552.66
General Journal	7/3/2012	EJ20120702		Dividends on ING Global Real Estate	Elmer	51.95	18,604.61
General Journal	7/3/2012	EJ20120702		Dividends on Loomis Sayles Inv Grade Bd	Elmer	26.87	18,631.48
General Journal	8/1/2012	EJ20120801		Dividends on JPMorgan Fed Mon Mkt	Elmer	0.04	18,631.52
General Journal	8/1/2012	EJ20120801		Dividends on JPMorgan Core Bond	Elmer	35.33	18,666.85
General Journal	8/1/2012	EJ20120801		Dividends on Mainstay High Yield Corp Bd	Elmer	58.45	18,725.30
General Journal	8/1/2012	EJ20120801		Dividends on Oppenheimer Intl Bd	Elmer	16.06	18,741.36
General Journal	8/1/2012	EJ20120801		Dividends on Pimco Total Return IV	Elmer	11.10	18,752.46
General Journal	8/1/2012	EJ20120801		Dividends on T Rowe Price New Income	Elmer	42.96	18,795.42
General Journal	8/2/2012	EJ20120802		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.14	18,822.56
General Journal	9/4/2012	EJ20120901		Dividends on JP Morgan Core Bond	Elmer	33.06	18,855.62
General Journal	9/4/2012	EJ20120901		Dividends on Mainstay High Yield Corp Bd	Elmer	58.81	18,914.43
General Journal	9/4/2012	EJ20120901		Dividends on Oppenheimer Intl Bd	Elmer	18.18	18,932.61
General Journal	9/4/2012	EJ20120901		Dividends on Pimco Total Return IV	Elmer	11.75	18,944.36
General Journal	9/4/2012	EJ20120901		Dividends on T Rowe Price New Income	Elmer	46.82	18,991.18
General Journal	9/5/2012	EJ20120902		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.89	19,019.07
General Journal	9/10/2012	EJ20120921		Dividend Reinvestment in XOM Stk 7769	Elmer	334.71	19,353.78
General Journal	9/10/2012	EJ20120921		Dividend Reinvestment in XOM Stk 7777	Survivor	390.17	19,743.95
General Journal	9/10/2012	EJ20120921		Dividend Reinvestment in CVX Stk 9415	Elmer	554.60	20,298.55
General Journal	9/10/2012	EJ20120921		Dividend Reinvestment in CVX Stk 9407	Elmer	114.44	20,412.99
General Journal	9/17/2012	EJ20120904		Dividends on Investment Co of America	Elmer	52.67	20,465.66
General Journal	9/21/2012	EJ20120905		Dividends on Pioneer Fund	Elmer	50.19	20,515.85
General Journal	9/24/2012	EJ20120906		Dividends on Capital World Growth & Income	Elmer	57.95	20,573.80
General Journal	9/26/2012	EJ20120908		Dividends on Columbia Mid Cap Value	Elmer	40.07	20,613.87
General Journal	9/26/2012	EJ20120908		Dividends on Dodge & Cox Income	Elmer	124.92	20,738.79
General Journal	9/27/2012	EJ20120909		Dividends on T Rowe Price Equity Income	Elmer	89.99	20,828.78
General Journal	9/28/2012	EJ20120910		Dividends on Mainstay High Yield Corp Bd	Elmer	59.16	20,887.94
General Journal	10/1/2012	EJ20121001		Dividends on JP Morgan Core Bond	Elmer	31.95	20,919.89
General Journal	10/1/2012	EJ20121001		Dividends on Oppenheimer Intl Bd	Elmer	13.87	20,933.76
General Journal	10/1/2012	EJ20121001		Dividends on Pimco Total Return IV	Elmer	9.14	20,942.90
General Journal	10/1/2012	EJ20121001		Dividends on T Rowe Price New Income	Elmer	36.25	20,979.15
General Journal	10/2/2012	EJ20121002		Dividends on ING Global Real Estate	Elmer	46.97	21,026.12
General Journal	10/2/2012	EJ20121002		Dividends on Loomis Sayles Inv Grade Bd	Elmer	26.30	21,052.42
General Journal	10/9/2012	EJ20121004		Dividends on Capital World Bond	Elmer	23.09	21,075.51
General Journal	11/1/2012	EJ20121101		Dividends on JP Morgan Core Bond	Elmer	30.84	21,106.35
General Journal	11/1/2012	EJ20121101		Dividends on Mainstay High Yield Corp Bd	Elmer	59.51	21,165.86
General Journal	11/1/2012	EJ20121101		Dividends on Oppenheimer Intl Bd	Elmer	17.63	21,183.49
General Journal	11/1/2012	EJ20121101		Dividends on Pimco Total Return IV	Elmer	12.79	21,196.28
General Journal	11/1/2012	EJ20121101		Dividends on T Rowe Price New Income	Elmer	40.84	21,237.12
General Journal	11/2/2012	EJ20121102		Dividends on Loomis Sayles Inv Grade Bd	Elmer	26.21	21,263.33
General Journal	12/3/2012	EJ20121201		Dividends on JP Morgan Core Bond	Elmer	30.90	21,294.23
General Journal	12/3/2012	EJ20121201		Dividends on Mainstay High Yield Corp Bd	Elmer	59.87	21,354.10
General Journal	12/3/2012	EJ20121201		Dividends on Oppenheimer Intl Bd	Elmer	17.62	21,371.72
General Journal	12/3/2012	EJ20121201		Dividends on Pimco Total Return IV	Elmer	13.77	21,385.49
General Journal	12/3/2012	EJ20121201		Dividends on T Rowe Price New Income	Elmer	42.81	21,428.30
General Journal	12/4/2012	EJ20121202		Dividends on Loomis Sales Inv Grade Bd	Elmer	26.84	21,455.14
General Journal	12/4/2012	EJ20121202		Dividends on Mainstay High Yield Corp Bd	Elmer	60.23	21,515.37
General Journal	12/7/2012	EJ20121204		Dividends on Blackrock Cap App	Elmer	45.22	21,560.59
General Journal	12/7/2012	EJ20121204		Dividends on Oppenheimer Rising Divid Fd Y	Elmer	57.90	21,618.49
General Journal	12/10/2012	EJ20121221		Dividend Reinvestment XOM Stk 6261	Elmer	334.71	21,953.20
General Journal	12/10/2012	EJ20121221		Dividend Reinvestment XOM Stk 3301	Neiva	390.17	22,343.37
General Journal	12/10/2012	EJ20121221		Dividend Reinvestment CVX Stk 9415	Elmer	4.36	22,347.73
General Journal	12/10/2012	EJ20121221		Dividend Reinvestment CVX Stk 9407	Elmer	4.35	22,352.08
General Journal	12/10/2012	EJ20121221		Dividend Reinvestment CVX Stk 9423	Elmer	1,110.22	23,462.30
General Journal	12/12/2012	EJ20121206		Dividends on MFS Research International	Elmer	316.70	23,779.00
General Journal	12/14/2012	EJ20121208		Dividends on Columbia Mid Cap Value	Elmer	33.89	23,812.89
General Journal	12/14/2012	EJ20121208		Dividends on T Rowe Price Equity Income	Elmer	111.31	23,924.20
General Journal	12/17/2012	EJ20121209		Dividends on Capital World Growth & Income	Elmer	97.20	24,021.40
General Journal	12/17/2012	EJ20121209		Dividends on Fidelity New Insights	Elmer	13.61	24,035.01
General Journal	12/20/2012	EJ20121210		Dividends on Dodge & Cox Intl Stock	Elmer	303.81	24,338.82
General Journal	12/20/2012	EJ20121210		Dividends on DWS Small Cap Value	Elmer	75.04	24,413.86
General Journal	12/20/2012	EJ20121210		Dividends on Dodge & Cox Income	Elmer	109.20	24,523.06
General Journal	12/21/2012	EJ20121211		Dividends on Capital World Bond	Elmer	31.56	24,554.62
General Journal	12/24/2012	EJ20121212		Dividends on Investment Co of America	Elmer	137.47	24,692.09
General Journal	12/24/2012	EJ20121212		Dividends on Loomis Sayles Inv Grade Bd	Elmer	75.83	24,767.92
General Journal	12/27/2012	EJ20121213		Dividends on New World	Elmer	110.57	24,878.49
General Journal	12/28/2012	EJ20121214		Dividends on Oppenheimer Rising Divid Fd Y	Elmer	43.70	24,922.19
General Journal	12/28/2012	EJ20121214		Dividends on Pimco Total Return IV	Elmer	65.59	24,987.78
General Journal	12/31/2012	EJ20121215		Dividends on Oppenheimer Intl Bd	Elmer	15.74	25,003.52
General Journal	1/2/2013	EJ20130101		Dividends on ING Global Real Estate	Elmer	201.20	25,204.72

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Brunsting Family Living Trust
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Type	Date	Num	Name	Memo	Class	Amount	Balance
General Journal	1/2/2013	EJ20130101		Dividends on JP Morgan Core Bond	Elmer	36.97	25,241.69
General Journal	1/2/2013	EJ20130101		Dividends on Pimco Total Return IV	Elmer	10.56	25,252.25
General Journal	1/2/2013	EJ20130101		Dividends on T Rowe Price New Income	Elmer	38.09	25,290.34
General Journal	2/1/2013	EJ20130201		Dividends on JP Morgan Core Bond	Elmer	28.70	25,319.04
General Journal	2/1/2013	EJ20130201		Dividends on Mainstay High Yield Corp Bd	Elmer	60.59	25,379.63
General Journal	2/1/2013	EJ20130201		Dividends on Oppenheimer Intl Bd	Elmer	17.37	25,397.00
General Journal	2/1/2013	EJ20130201		Dividends on Pimco Total Return IV	Elmer	8.54	25,405.54
General Journal	2/1/2013	EJ20130201		Dividends on T Rowe Price New Income	Elmer	35.87	25,441.41
General Journal	2/4/2013	EJ20130202		Dividends on Loomis Sayles Inv Grade Bd	Elmer	26.43	25,467.84
General Journal	3/1/2013	EJ20130301		Dividends on JP Morgan Core Bond	Elmer	29.95	25,497.79
General Journal	3/1/2013	EJ20130301		Dividends on Mainstay High Yield Corp Bd	Elmer	60.95	25,558.74
General Journal	3/1/2013	EJ20130301		Dividends on Oppenheimer Intl Bd	Elmer	16.53	25,575.27
General Journal	3/1/2013	EJ20130301		Dividends on Pimco Total Return IV	Elmer	9.68	25,584.95
General Journal	3/1/2013	EJ20130301		Dividends on T Rowe Price New Income	Elmer	37.06	25,622.01
General Journal	3/4/2013	EJ20130302		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.61	25,649.62
General Journal	3/11/2013	EJ20130321		Dividend Reimbursement on XOM Stk 3319	Elmer	1.72	25,651.34
General Journal	3/11/2013	EJ20130321		Dividend Reimbursement on XOM Stk 6261	Elmer	336.88	25,988.22
General Journal	3/11/2013	EJ20130321		Dividend Reimbursement on XOM Stk 3301	Neiva	392.70	26,380.92
General Journal	3/11/2013	EJ20130321		Dividend Reimbursement on CVX Stk 9415	Elmer	4.41	26,385.33
General Journal	3/11/2013	EJ20130321		Dividend Reimbursement on CVX Stk 9407	Elmer	4.39	26,389.72
General Journal	3/11/2013	EJ20130321		Dividend Reimbursement on CVX Stk 9423	Elmer	1,122.04	27,511.76
General Journal	3/14/2013	EJ20130304		Dividends on Investment Co of America	Elmer	53.50	27,565.26
General Journal	3/18/2013	EJ20130305		Dividends on Capital World Growth & Income	Elmer	61.70	27,626.96
General Journal	3/22/2013	EJ20130307		Dividends on DWS Small Cap Value	Elmer	42.72	27,669.68
General Journal	3/25/2013	EJ20130308		Dividends on Columbia Mid Cap Value	Elmer	25.46	27,695.14
General Journal	3/27/2013	EJ20130309		Dividends on Capital World Bond	Elmer	23.47	27,718.61
General Journal	3/27/2013	EJ20130309		Dividends on Dodge & Cox Income	Elmer	111.08	27,829.69
General Journal	3/27/2013	EJ20130309		Dividends on T Rowe Price Equity Income	Elmer	77.55	27,907.24
General Journal	4/1/2013	EJ20130401		Dividends on JP Morgan Core Bond	Elmer	30.02	27,937.26
General Journal	4/1/2013	EJ20130401		Dividends on Mainstay High Yield Corp Bd	Elmer	61.31	27,998.57
General Journal	4/1/2013	EJ20130401		Dividends on Oppenheimer Intl Bd	Elmer	17.62	28,016.19
General Journal	4/1/2013	EJ20130401		Dividends on Pimco Total Return IV	Elmer	12.00	28,028.19
General Journal	4/1/2013	EJ20130401		Dividends on T Rowe Price New Income	Elmer	37.30	28,065.49
General Journal	4/2/2013	EJ20130402		Dividends on ING Global Real Estate	Elmer	40.72	28,106.21
General Journal	4/2/2013	EJ20130402		Dividends on Loomis Sayles Inv Grade Bd	Elmer	27.34	28,133.55
General Journal	5/1/2013	EJ20130501		Dividends on JP Morgan Core Bond	Elmer	30.08	28,163.63
General Journal	5/1/2013	EJ20130501		Dividends on Mainstay High Yield Corp Bd	Elmer	61.67	28,225.30
General Journal	5/1/2013	EJ20130501		Dividends on Oppenheimer Intl Bd	Elmer	17.94	28,243.24
General Journal	5/1/2013	EJ20130501		Dividends on Pimco Total Return IV	Elmer	13.27	28,256.51
General Journal	5/1/2013	EJ20130501		Dividends on T Rowe Price New Income	Elmer	38.30	28,294.81
General Journal	5/2/2013	EJ20130502		Dividends on Loomis Sayles Inv Grade Bd	Elmer	26.65	28,321.46
Total Dividend Income						28,321.46	28,321.46
Interest Income							
General Journal	12/27/2010	EJ 20101202		Interest on VK Bld Amer Bonds	Survivor	67.90	67.90
General Journal	12/27/2010	EJ 20101202		Interest on Invsco Bld Amer Bds	Survivor	23.70	91.60
General Journal	12/31/2010	EJ 20101203		Interest for December	Survivor	0.03	91.63
General Journal	1/20/2011	EJ 20110102		Interest on Toyota Moter Cr Corp	Survivor	25.00	116.63
General Journal	1/25/2011	EJ 20110103		Interest on VK Bld Amer Bonds	Survivor	67.90	184.53
General Journal	1/25/2011	EJ 20110103		Interest on VK Bld Amer Bonds	Survivor	51.00	235.53
General Journal	2/22/2011	EJ 20110204		Interest on Toyota Motor Cr Corp	Survivor	25.00	260.53
General Journal	2/22/2011	EJ 20110204		Interest on Money Market Fund	Survivor	0.01	260.54
General Journal	2/25/2011	EJ 20110205		Interest on VK Bld Amer Bonds Incm	Survivor	68.04	328.58
General Journal	2/25/2011	EJ 20110205		Interest on Invsco Bld Amer Bonds Incm	Survivor	50.90	379.48
General Journal	3/15/2011	EJ 20110301		Interest on GMAC Smartnotes	Survivor	317.25	696.73
General Journal	3/21/2011	EJ 20110302		Interest on Toyota Motor Cr Corp	Survivor	25.00	721.73
General Journal	3/25/2011	EJ 20110303		Interest on VK Bld Amer Bonds Incm	Survivor	67.90	789.63
General Journal	3/25/2011	EJ 20110303		Interest on Invsco Bld Amer Bds Incm	Survivor	51.00	840.63
General Journal	4/14/2011	EJ 20110402		Accrued Int - Sale of Toyota Motor Cr Corp	Survivor	20.00	860.63
General Journal	4/14/2011	EJ 20110402		Accrued Interest Sale of GMAC SmartNotes	Survivor	51.11	911.74
General Journal	4/15/2011	EJ20110421		Interest on GE Capital Corp Internotes	Survivor	333.13	1,244.87
General Journal	4/20/2011	EJ 20110403		Proceeds from Sale of In Fin Auth Rev Parkview Hlth	Survivor	387.29	1,632.16
General Journal	4/25/2011	EJ 20110404		Interest on VK Bld Amer Bonds Incm	Survivor	67.76	1,699.92
General Journal	4/25/2011	EJ 20110404		Interest on Invsco Bld Amer Bds Incm	Survivor	50.90	1,750.82
General Journal	5/13/2011	EJ20110521		Sell GE Capital Corp Internotes	Survivor	51.82	1,802.64
General Journal	5/13/2011	EJ20110521		Sell GMAC Smartnotes	Survivor	277.50	2,080.14
General Journal	5/23/2011	EJ20110523		Interest on Money Market Funds	Survivor	0.93	2,081.07
General Journal	5/25/2011	EJ20110502		Interest on VK Bld Amer Bonds Incm	Survivor	67.76	2,148.83
General Journal	5/25/2011	EJ20110502		Interest on Invsco Bld Amer Bds Incm	Survivor	51.00	2,199.83
General Journal	6/21/2011	EJ20110621		Interest on Money Market Funds	Survivor	0.30	2,200.13
General Journal	6/27/2011	EJ20110604		Interest on VK Bld Amer Bonds	Survivor	67.90	2,268.03
General Journal	6/27/2011	EJ20110604		Interest on Invsco Bld Amer Bds	Survivor	50.90	2,318.93
General Journal	7/25/2011	EJ20110701		Interest on VK Bld Amer Bonds	Survivor	67.76	2,386.69
General Journal	7/25/2011	EJ20110701		Interest on VK Bld Amer Bonds	Survivor	51.00	2,437.69
General Journal	8/1/2011	EJ20110801		Interest on VK Bld Amer Bonds Incm	Survivor	67.76	2,505.45
General Journal	8/1/2011	EJ20110801		Interest on Invsco Bld Amer Bds Incm	Survivor	50.90	2,556.35
General Journal	9/26/2011	EJ20110901		Interest on VK Bld Amer Bonds Incm	Survivor	68.04	2,624.39
General Journal	9/26/2011	EJ20110901		Interest on Invsco Bld Amer Bds Incm	Survivor	50.90	2,675.29
General Journal	10/13/2011	EJ20111001		Accrued Interest in Sale of VK Bld Amer Bonds	Survivor	6.72	2,682.01
General Journal	10/25/2011	EJ20111002		Interest in VK Bld Amer Bonds Incm	Survivor	67.90	2,749.91
General Journal	10/25/2011	EJ20111002		Interest in Invsco Bld Amer Bds Incm	Survivor	51.10	2,801.01
General Journal	11/16/2011	EJ20111103		Proceeds from Sale of Invsco Bld Amer Bds	Survivor	10.20	2,811.21
General Journal	11/21/2011	EJ20111105		Interest on Money Market Funds	Survivor	0.05	2,811.26
General Journal	11/25/2011	EJ20111106		Interest on Invsco Bld Amer Bds Incm	Survivor	51.00	2,862.26
General Journal	10/10/2012	EJ20120422		Interest income	Survivor	0.27	2,862.53
General Journal	10/12/2012	EJ20120443		Interest Earned	Elmer	1.17	2,863.70
Deposit	10/23/2012			October Interest	Survivor	17.34	2,881.04
General Journal	11/7/2012	EJ20120424		Interest inc	Survivor	5.72	2,886.76

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Brunsting Family Living Trust
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Type	Date	Num	Name	Memo	Class	Amount	Balance
General Journal	11/9/2012	EJ20120445		Interest inc	Elmer	1.08	2,887.84
Deposit	11/21/2012			November Interest	Survivor	26.47	2,914.31
General Journal	12/7/2012	EJ20120425		Interest inc	Survivor	6.13	2,920.44
General Journal	12/11/2012	EJ20120446		Interest Earned	Elmer	1.23	2,921.67
Deposit	12/20/2012			December Interest	Survivor	20.08	2,941.75
General Journal	1/9/2013	EJ20120427		Interest inc	Survivor	6.75	2,948.50
General Journal	1/11/2013	EJ20120447		Interest Earned	Elmer	1.19	2,949.69
Deposit	1/23/2013			January Interest	Survivor	23.32	2,973.01
General Journal	2/6/2013	EJ20120428		Interest inc	Survivor	5.74	2,978.75
General Journal	2/8/2013	EJ20120448		Interest Earned	Elmer	1.08	2,979.83
Deposit	2/20/2013			February Interest	Survivor	19.23	2,999.06
General Journal	3/8/2013	EJ20120430		Interest Earned	Survivor	6.15	3,005.21
General Journal	3/12/2013	EJ20120449		Interest Earned	Elmer	1.66	3,006.87
Deposit	3/21/2013			March Interest	Survivor	19.91	3,026.78
General Journal	4/8/2013	EJ20120432		Interest Earned	Survivor	6.55	3,033.33
General Journal	4/11/2013	EJ20120452		Interest Earned	Elmer	1.77	3,035.10
Deposit	4/22/2013			April Interest	Survivor	21.98	3,057.08
General Journal	5/9/2013	EJ20120433		Interest Earned	Survivor	5.90	3,062.98
General Journal	5/13/2013	EJ20120453		Interest Earned	Elmer	1.46	3,064.44
Deposit	5/22/2013			May Interest	Survivor	20.61	3,085.05
Total Interest Income						3,085.05	3,085.05
Long Term Capital Gains - Funds							
General Journal	12/31/2010	EJ20101216		LTCG from Oppenheimer Intl Bond Fund Y	Elmer	75.11	75.11
General Journal	12/8/2011	EJ20111214		LTCG on T Rowe Price New Income	Elmer	77.13	152.24
General Journal	12/16/2011	EJ20111218		LTCG on JP Morgan Core Bond	Elmer	26.07	178.31
General Journal	12/16/2011	EJ20111218		LTCG on JP Morgan High Yield	Elmer	58.93	237.24
General Journal	12/19/2011	EJ20111219		LTCG on Credit Suisse Comm Ret Strat	Elmer	6.24	243.48
General Journal	12/20/2011	EJ20111220		LTCG on DWS Small Cap Value	Elmer	42.21	285.69
General Journal	12/28/2011	EJ20111225		LTCG on Loomis Sayles Inv Grade Bd	Elmer	47.77	333.46
General Journal	6/26/2012	EJ20120608		LTCG on Baron Small Cap	Elmer	2.48	335.94
General Journal	11/30/2012	EJ20121104		LTCG on Baron Small Cap	Elmer	152.76	488.70
General Journal	12/10/2012	EJ20121205		LTCG on T Rowe Price New Income	Elmer	85.71	574.41
General Journal	12/13/2012	EJ20121207		LTCG on Pimco Total Return IV	Elmer	26.80	601.21
General Journal	12/14/2012	EJ20121208		LTCG on JP Morgan Core Bond	Elmer	16.83	618.04
General Journal	12/20/2012	EJ20121210		LTCG on DWS Small Cap Value	Elmer	76.86	694.90
General Journal	12/21/2012	EJ20121211		LTCG on Capital World Bond	Elmer	41.81	736.71
General Journal	12/24/2012	EJ20121212		LTCG on Investment Co of America	Elmer	176.84	913.55
General Journal	12/24/2012	EJ20121212		LTCG on Loomis Sayles Inv Grade Bd	Elmer	62.90	976.45
General Journal	12/31/2012	EJ20121215		LTCG on Oppenheimer Intl Bd	Elmer	31.01	1,007.46
General Journal	3/22/2013	EJ20130307		LTCG on DWS Small Cap Value	Elmer	39.85	1,047.31
Total Long Term Capital Gains - Funds						1,047.31	1,047.31
Short Term Capital Gains- Funds							
General Journal	1/24/2011	EJ20110107		STCG on Fidelity New Insights Fd Instl	Elmer	1.98	1.98
General Journal	2/14/2011	EJ20110204		STCG on Fidelity New Insights Fd Instl	Elmer	22.38	24.36
General Journal	12/8/2011	EJ20111214		STCG on T Rowe Price New Income	Elmer	38.56	62.92
General Journal	12/16/2011	EJ20111218		STCG on JP Morgan High Yield	Elmer	36.12	99.04
General Journal	12/28/2011	EJ20111225		STCG on Loomis Sayles Inv Grade Bd	Elmer	16.95	115.99
General Journal	12/10/2012	EJ20121205		STCG on T Rowe Price New Income	Elmer	68.57	184.56
General Journal	12/13/2012	EJ20121207		STCG on Pimco Total Return IV	Elmer	173.87	358.43
General Journal	12/14/2012	EJ20121208		STCG on JP Morgan Core Bond	Elmer	1.54	359.97
General Journal	12/17/2012	EJ20121209		STCG on Fidelity New Insights	Elmer	86.18	446.15
General Journal	12/20/2012	EJ20121210		STCG on DWS Small Cap Value	Elmer	14.89	461.04
General Journal	12/21/2012	EJ20121211		STCG on Capital World Bond	Elmer	22.74	483.78
General Journal	12/24/2012	EJ20121212		STCG on Loomis Sayles Inv Grade Bd	Elmer	5.32	489.10
Total Short Term Capital Gains- Funds						489.10	489.10
Stock Sales less Broker Fees							
General Journal	1/4/2011	EJ 20110101		Sale of Deere & Co Stock	Survivor	10,082.45	10,082.45
General Journal	1/4/2011	EJ 20110101		Commission on Sale of Deere & Co Stock	Survivor	-208.11	9,874.34
General Journal	1/4/2011	EJ 20110101		Transaction Fee on Sale of Deere & Co Stock	Survivor	-4.95	9,869.39
General Journal	2/8/2011	EJ 20110202		Sell 275 Shares Deere & Co	Survivor	25,563.45	35,432.84
General Journal	2/8/2011	EJ 20110202		Commission on Sale of 275 Shares Deere & Co	Survivor	-460.63	34,972.21
General Journal	2/8/2011	EJ 20110202		Transaction Fee on Sale of 275 Shares Deere & Co	Survivor	-4.95	34,967.26
General Journal	4/14/2011	EJ 20110402		Principal Amt Sale of Toyota Motor Cr Corp	Survivor	5,000.00	39,967.26
General Journal	4/14/2011	EJ 20110402		Transaction Fee - Sale of Toyota Motor Cr Corp	Survivor	-4.95	39,962.31
General Journal	4/14/2011	EJ 20110402		Principal Amt Sale of GMAC SmartNotes	Survivor	8,730.00	48,692.31
General Journal	4/14/2011	EJ 20110402		Transaction Fee - Sale of GMAC SmartNotes	Survivor	-4.95	48,687.36
General Journal	4/20/2011	EJ 20110403		Proceeds from Sale of In Fin Auth Rev Parkview Hlth	Survivor	14,824.35	63,511.71
General Journal	4/20/2011	EJ 20110403		Transaction Fee from Sale of In Fin Auth Rev Parkview Hlth	Survivor	-4.95	63,506.76
General Journal	5/13/2011	EJ20110521		Transaction Fee on Sale of GE Capital Corp Internotes	Survivor	-4.95	63,501.81
General Journal	5/13/2011	EJ20110521		Transaction Fee on Sale of GMAC Smartnotes	Survivor	-4.95	63,496.86
General Journal	5/16/2011	EJ20110522		Commission on Sale Chevron Corp	Survivor	-199.66	63,297.20
General Journal	5/16/2011	EJ20110522		Transaction Fee on Sale Chevron Corp	Survivor	-4.95	63,292.25
General Journal	5/16/2011	EJ20110522		Commission on Sale of Stryker Corp	Survivor	-228.32	63,063.93
General Journal	5/16/2011	EJ20110522		Transaction Fee on Sale of Stryker Corp	Survivor	-4.95	63,058.98
General Journal	5/16/2011	EJ20110522		Commission on Sale of Dow Chemical	Survivor	-146.44	62,912.54
General Journal	5/16/2011	EJ20110522		Transaction Fee on Sale of Dow Chemical	Survivor	-4.95	62,907.59
General Journal	5/16/2011	EJ20110522		Commission on Sale of Gen Motors Warrants (WSA)	Survivor	-50.00	62,857.59
General Journal	5/16/2011	EJ20110522		Transaction Fee on Sale of Gen Motors Warrants (WSA)	Survivor	-4.95	62,852.64
General Journal	5/16/2011	EJ20110522		Commission on Sale of Gen Motors Warrants (WSB)	Survivor	-50.00	62,802.64
General Journal	5/16/2011	EJ20110522		Transaction Fee on Sale of Gen Motors Warrants (WSB)	Survivor	-4.95	62,797.69
General Journal	5/16/2011	EJ20110522		Transaction Fee on Sale of Gen Motors Common	Survivor	-4.95	62,792.74
General Journal	5/27/2011	EJ20110524		Commission on Sale of Gen Motors Common	Survivor	-50.00	62,742.74
General Journal	5/27/2011	EJ20110524		Adjust Value on GE Capital Corp Internotes	Survivor	-46.87	62,695.87
General Journal	5/27/2011	EJ20110524		Adjust Value on GMAC SmartNotes	Survivor	-272.55	62,423.32
				Adjust Value on Chevron Corp (CVX)	Survivor	204.61	62,627.93

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Brunsting Family Living Trust
Detail of Accounts
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Type	Date	Num	Name	Memo	Class	Amount	Balance
General Journal	5/27/2011	EJ20110524		Adjust Value on Dow Chemical (DOW)	Survivor	151.39	62,779.32
General Journal	5/27/2011	EJ20110524		Adjust Value on Gen Motors Warrants (WSA)	Survivor	54.95	62,834.27
General Journal	5/27/2011	EJ20110524		Adjust Value on Gen Motors Warrants (WSB)	Survivor	54.95	62,889.22
General Journal	5/27/2011	EJ20110524		Adjust Value on Gen Motors Co (GM)	Survivor	54.95	62,944.17
General Journal	5/27/2011	EJ20110524		Adjust Value on Stryker Corp (SYK)	Survivor	233.27	63,177.44
General Journal	6/10/2011	EJ20110601		Sales Price on Sale of 623 Sh Deere & Company	Survivor	51,039.90	114,217.34
General Journal	6/10/2011	EJ20110601		Commission on Sale of 623 Sh Deere & Company	Survivor	-643.66	113,573.48
General Journal	6/10/2011	EJ20110601		Transaction Fee on Sale of 623 Sh Deere & Company	Survivor	-4.95	113,568.53
General Journal	6/10/2011	EJ20110123		Exxon IDC000946776 Invest Inc	Survivor	896.76	114,465.29
General Journal	7/28/2011	EJ20110721		Redeem Gen Motors Co Warrant (WSB)	Survivor	12.93	114,478.22
General Journal	7/28/2011	EJ20110721		Redeem Gen Motors Co Warrant (WSA)	Survivor	17.87	114,496.09
General Journal	7/28/2011	EJ20110721		Redeem Gen Motors Co Common	Survivor	0.37	114,496.46
General Journal	10/13/2011	EJ20111001		Proceeds from Sale of VK Bld Amer Bonds	Survivor	14,492.80	128,989.26
General Journal	10/26/2011	EJ20111003		Sale Price in Sale of Deere & Co Stock	Survivor	30,470.12	159,459.38
General Journal	10/26/2011	EJ20111003		Commission in Sale of Deere & Co Stock	Survivor	-458.73	159,000.65
General Journal	10/26/2011	EJ20111003		Transaction Fee in Sale of Deere & Co Stock	Survivor	-4.95	158,995.70
General Journal	10/28/2011	EJ20111022		Redeem Gen Motors Warrant (WSB)	Survivor	8.33	159,004.03
General Journal	10/28/2011	EJ20111022		Redeem Gen Motors Warrant (WSA)	Survivor	11.92	159,015.95
General Journal	10/28/2011	EJ20111022		Redeem Gen Motors Common	Survivor	19.85	159,035.80
General Journal	11/15/2011	EJ20111102		Sale of Deere & Co Stock	Survivor	14,381.25	173,417.05
General Journal	11/15/2011	EJ20111102		Commission on Sale of Deere & Co Stock	Survivor	-266.15	173,150.90
General Journal	11/15/2011	EJ20111102		Transaction Fee on Sale of Deere & Co Stock	Survivor	-4.95	173,145.95
General Journal	11/18/2011	EJ20111103		Proceeds from Invsco Bld Amer Bds	Survivor	10,508.70	183,654.65
General Journal	1/9/2012	EJ20120121		Commission on Sale of Gen Motors Common	Survivor	-2.10	183,652.55
General Journal	1/9/2012	EJ20120121		Transaction Fee on Sale of Gen Motors Common	Survivor	-4.95	183,647.60
General Journal	1/27/2012	EJ20120122		Adjust Value on Gen Motors Common	Survivor	7.02	183,654.62
General Journal	6/15/2012	EJ20120621		Redeem Motors Liq Co Guc Tr Ben Int	Survivor	8.17	183,662.79
Total Stock Sales less Broker Fees						183,662.79	183,662.79
Total Investment Income						216,605.71	216,605.71
Miscellaneous Income							
Deposit	12/31/2010			Deposit	Neiva	70.30	70.30
General Journal	3/11/2011	EJ20120460		Invest inc	Neiva	390.64	460.94
General Journal	4/11/2011	EJ20120463		Online Banking Transfer from chking Acct 2839	Neiva	1,500.00	1,960.94
General Journal	5/9/2011	EJ20110122		Invest Inc	Survivor	4.18	1,965.12
General Journal	6/28/2011	EJ20120471		Invest inc.	Neiva	725.64	2,690.76
General Journal	8/18/2011	EJ20120473		Invest inc	Neiva	702.72	3,393.48
General Journal	9/19/2011	EJ20120475		Invest inc	Neiva	507.76	3,901.24
General Journal	11/9/2011	EJ20110147		Invest Inc	Survivor	30.40	3,931.64
General Journal	1/3/2012	EJ20120436		Counter credit - Invest inc	Elmer	495.72	4,427.36
General Journal	3/7/2012	EJ20110153		Other income	Survivor	20.49	4,447.85
General Journal	3/13/2012	EJ20120411		--Split--	Survivor	237.16	4,685.01
General Journal	4/16/2012	EJ20120440		fed - invest inc	Elmer	383.45	5,068.46
General Journal	5/17/2012	EJ20120418		Invest Income	Survivor	30.40	5,098.86
General Journal	6/5/2012	EJ20120419		Invest inc	Survivor	71.04	5,169.90
General Journal	10/15/2012	EJ20120444		Invest inc	Elmer	57.86	5,227.76
General Journal	10/26/2012	EJ20120423		Invest inc	Survivor	24.04	5,251.80
General Journal	11/22/2012	EJ20120435		Invest inc	Elmer	381.32	5,633.12
General Journal	12/24/2012	EJ20120426		Inv inc - Chevron and Metlife	Survivor	104.26	5,737.38
General Journal	3/1/2013	EJ20120429		Inv inc - John Deere	Survivor	71.61	5,808.99
General Journal	3/13/2013	EJ20120439		Other inc	Elmer	495.72	6,304.71
General Journal	4/5/2013	EJ20120431		Deposit --Split--	Survivor	54.22	6,358.93
General Journal	4/5/2013	EJ20120451		Hull Co-op Invest inc	Elmer	101.80	6,460.73
Total Miscellaneous Income						6,460.73	6,460.73
Pension Income							
Deposit	12/31/2010			Pension ID [redacted]9128	Neiva	594.41	594.41
Deposit	12/31/2010			Minnesota Life Annuity	Neiva	91.78	686.19
General Journal	1/31/2011	BOA20110105		Net Pension Receipt	Survivor	600.71	1,286.90
General Journal	2/2/2011	BOA20110106		Minnesota Life DES:Annuity ID:0	Survivor	91.78	1,378.68
General Journal	2/28/2011	BOA20110111		Benefits DES: Pension ID:[redacted]0518	Survivor	600.71	1,979.39
General Journal	3/1/2011	BOA20110112		Minnesota Life DES:Annuity ID:0	Survivor	91.78	2,071.17
General Journal	3/31/2011	BOA20110114		Benefits DES:Pension ID:[redacted]0208	Survivor	600.71	2,671.88
General Journal	4/1/2011	BOA20110115		Minnesota Life DES:Annuity ID:0	Survivor	91.78	2,763.66
General Journal	4/29/2011	EJ20110110		Benefits DES:Pension ID:[redacted]0518	Survivor	600.71	3,364.37
General Journal	4/29/2011	EJ20110111		Minnesota Life DES:Annuity ID:0	Survivor	91.78	3,456.15
General Journal	5/31/2011	EJ20110116		Benefits DES:Pension ID:[redacted]0508	Survivor	600.71	4,056.86
General Journal	6/1/2011	EJ20110119		Minnesota Life DES: Annuity ID:0	Survivor	91.78	4,148.64
General Journal	6/30/2011	EJ20110124		Benefits DES:Pension ID:[redacted]0218	Survivor	600.71	4,749.35
General Journal	7/1/2011	EJ20110125		Minnesota Life DES:Annuity ID:0	Survivor	91.78	4,841.13
General Journal	7/29/2011	EJ20110128		Benefits DES:Pension ID:[redacted]0528	Survivor	600.71	5,441.84
General Journal	8/1/2011	EJ20110129		Minnesota Life DES:Annuity ID:0	Survivor	91.78	5,533.62
General Journal	8/31/2011	EJ20110134		Benefits DES:Pension ID:[redacted]0168	Survivor	600.71	6,134.33
General Journal	9/1/2011	EJ20110135		Minnesota Life DES: Annuity ID:0	Survivor	91.78	6,226.11
General Journal	9/30/2011	EJ20110141		Minnesota Life DES: Annuity ID:0	Survivor	91.78	6,317.89
General Journal	9/30/2011	EJ20110142		Benefits DES:Pension ID:[redacted]2468	Survivor	600.71	6,918.60
General Journal	10/31/2011	EJ20110144		Benefits DES:Pension ID:[redacted]3478	Survivor	600.71	7,519.31
General Journal	11/1/2011	EJ20110145		Minnesota Life DES:Annuity ID:0	Survivor	91.78	7,611.09
General Journal	11/1/2011	EJ20110157		Minnesota Life Des:Annuity ID:0	Survivor	91.78	7,702.87
General Journal	11/30/2011	EJ20110149		Benefits DES:Pension ID:[redacted]3368	Survivor	600.71	8,303.58
Total Pension Income						8,303.58	8,303.58
Proceeds from Sale of Home							
General Journal	3/12/2012	EJ20120408		Option fee for house - Other Inc	Survivor	100.00	100.00
General Journal	3/14/2012	EJ20120413		Sale of house - Other income	Survivor	433,129.32	433,229.32
General Journal	3/23/2012	EJ20120414		Sale of house --Split--	Survivor	162.73	433,392.05

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Brunsting Family Living Trust
Detail of Accounts
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Type	Date	Num	Name	Memo	Class	Amount	Balance
Total Proceeds from Sale of Home						433,392.05	433,392.05
Social Security Income							
General Journal	2/3/2011	EJ20120457		Soc Security ID:2	Nelva	1,780.00	1,780.00
General Journal	3/3/2011	EJ20120459		Social Security	Nelva	1,780.00	3,560.00
General Journal	4/1/2011	EJ20120462		Social Security	Nelva	1,780.00	5,340.00
General Journal	5/2/2011	EJ20120464		Social Security	Nelva	1,780.00	7,120.00
General Journal	6/3/2011	EJ20120465		Social Security	Nelva	1,780.00	8,900.00
General Journal	7/1/2011	EJ20120469		Social Security	Nelva	1,780.00	10,680.00
General Journal	8/3/2011	EJ20120472		Social Security	Nelva	1,780.00	12,460.00
General Journal	9/2/2011	EJ20120474		Social Security	Nelva	1,780.00	14,240.00
General Journal	10/3/2011	EJ20120477		Social Security	Nelva	1,780.00	16,020.00
General Journal	11/3/2011	EJ20120478		Social Security	Nelva	1,780.00	17,800.00
Total Social Security Income						17,800.00	17,800.00
Tax Refunds							
General Journal	1/3/2011	BOA20110101		US Treasury 310 DES	Survivor	1,780.00	1,780.00
General Journal	1/11/2012	EJ20110159		Tax Refund	Survivor	6,215.87	7,995.87
General Journal	4/16/2012	EJ20120441		Federal tax refund	Elmer	6,913.00	14,908.87
General Journal	4/25/2012	EJ20120416		Federal Tax Refund	Survivor	4,908.00	19,816.87
Total Tax Refunds						19,816.87	19,816.87
Total Income						830,169.35	830,169.35
Expense							
Automobile Expense							
Check	1/18/2011	EFT	Exxon Mobil	Auto:Fuel	Nelva	20.93	20.93
Check	1/27/2011	EFT	Chevron	Fuel	Nelva	20.86	41.79
Check	1/31/2011	EFT	Chevron	Fuel	Nelva	21.07	62.86
Check	2/8/2011	EFT	Exxon Mobil	Fuel	Nelva	20.06	82.92
Check	2/9/2011	EFT	Nnt Hare Repai	Auto Service	Nelva	574.65	657.57
Check	2/10/2011	EFT	Exxon Mobil	Fuel	Nelva	10.67	668.24
Check	2/14/2011	EFT	Chevron	Fuel	Nelva	20.10	688.34
Check	2/23/2011	EFT	Exxon Mobil	Fuel	Nelva	20.36	708.70
Check	3/2/2011	EFT	Exxon Mobil	Fuel	Nelva	21.69	730.39
Check	3/7/2011	EFT	Chevron	Fuel	Nelva	22.98	753.37
Check	3/14/2011	EFT	Chevron	Fuel	Nelva	22.20	775.57
Check	3/14/2011	EFT	Exxon Mobil	Fuel	Nelva	22.20	797.77
Check	3/21/2011	EFT	Chevron	Fuel	Nelva	21.50	819.27
Check	3/21/2011	EFT	Chevron	Fuel	Nelva	24.55	843.82
Check	3/23/2011	EFT	Chevron	Fuel	Nelva	24.66	868.48
Check	3/28/2011	EFT	Chevron	Fuel	Nelva	21.76	890.24
Check	3/29/2011	EFT	Chevron	Fuel	Nelva	22.76	913.00
Check	4/1/2011	EFT	Chevron	Fuel	Nelva	24.65	937.65
Check	4/8/2011	EFT	Exxon Mobil	Fuel	Nelva	54.60	992.25
Check	4/14/2011	EFT	Chevron	Fuel	Nelva	21.02	1,013.27
Check	4/18/2011	EFT	Chevron	Fuel	Nelva	23.88	1,037.15
Check	4/18/2011	EFT	Exxon Mobil	Fuel	Nelva	22.51	1,059.66
Check	4/25/2011	EFT	Fastop	Fuel	Nelva	2.90	1,062.56
Check	4/25/2011	EFT	Fastop	Fuel	Nelva	50.84	1,113.40
Check	4/25/2011	EFT	Exxon Mobil	Fuel	Nelva	59.02	1,172.42
Check	4/25/2011	EFT	Chevron	Fuel	Nelva	14.05	1,186.47
Check	5/3/2011	EFT	Exxon Mobil	Fuel	Nelva	28.78	1,215.25
Check	5/6/2011	EFT	Exxon Mobil	Fuel	Nelva	23.63	1,238.88
Check	5/9/2011	EFT	Exxon Mobil	Fuel	Nelva	27.80	1,266.68
Check	5/9/2011	EFT	Chevron	Fuel	Nelva	28.76	1,295.44
Check	5/16/2011	EFT	Chevron	Fuel	Nelva	29.32	1,324.76
Check	5/16/2011	EFT	Exxon Mobil	Fuel	Nelva	24.64	1,349.40
Check	5/20/2011	EFT	Chevron		Nelva	23.73	1,373.13
Check	5/23/2011	EFT	Chevron	Fuel	Nelva	24.40	1,397.53
Check	5/23/2011	EFT	Chevron	Fuel	Nelva	2.90	1,400.43
Check	5/24/2011	EFT	Chevron	Fuel	Nelva	23.33	1,423.76
Check	5/25/2011	EFT	TX Med Ctr Garage	Parking	Nelva	6.00	1,429.76
Check	5/26/2011	EFT	TX Med Ctr Garage	parking	Nelva	6.00	1,435.76
Check	5/27/2011	EFT	TX Med Ctr Garage	parking	Nelva	5.00	1,440.76
Check	5/31/2011	EFT	TX Med Ctr Garage	parking	Nelva	6.00	1,446.76
Check	5/31/2011	EFT	Chevron	Fuel	Nelva	24.48	1,471.24
Check	5/31/2011	EFT	TX Med Ctr Garage	parking	Nelva	2.00	1,473.24
Check	6/3/2011	EFT	Chevron	Fuel	Nelva	24.00	1,497.24
Check	6/6/2011	EFT	Exxon Mobil	Fuel	Nelva	43.12	1,540.36
Check	6/7/2011	EFT	Chevron	Fuel	Nelva	22.92	1,563.28
Check	6/8/2011	EFT	Exxon Mobil	Fuel	Nelva	22.08	1,585.36
Check	6/13/2011	EFT	Exxon Mobil	Fuel	Nelva	23.84	1,609.20
Check	6/14/2011	EFT	Exxon Mobil	Fuel	Nelva	29.37	1,638.57
Check	6/15/2011	EFT	Chevron	Fuel	Nelva	26.47	1,665.04
Check	6/20/2011	EFT	Exxon Mobil	Fuel	Nelva	25.60	1,690.64
Check	6/21/2011	EFT	Chevron	Fuel	Nelva	26.58	1,717.22
Check	6/27/2011	EFT	Chevron	Fuel	Nelva	25.13	1,742.35
Check	6/28/2011	EFT	Chevron	Fuel	Nelva	22.70	1,765.05
Check	7/1/2011	EFT	Chevron	Fuel	Nelva	26.25	1,791.30
Check	7/5/2011	EFT	Shell	Fuel	Nelva	23.05	1,814.35
Check	7/5/2011	EFT	Chevron	Fuel	Nelva	26.86	1,841.21
Check	7/8/2011	EFT	Chevron	Fuel	Nelva	25.68	1,866.89
Check	7/11/2011	EFT	Chevron	Fuel	Nelva	21.07	1,887.96
Check	7/13/2011	EFT	Chevron	Fuel	Nelva	23.37	1,911.33
Check	7/18/2011	EFT	Exxon Mobil	Fuel	Nelva	25.35	1,936.68
Check	7/19/2011	EFT	Chevron	Fuel	Nelva	30.18	1,966.86
Check	7/20/2011	EFT	Chevron	Fuel	Nelva	24.10	1,990.96

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	7/25/2011	EFT	Chevron	Fuel	Nelva	26.07	2,017.03
Check	7/27/2011	EFT	Chevron	Fuel	Nelva	24.45	2,041.48
Check	8/1/2011	EFT	Exxon Mobil	Fuel	Nelva	25.68	2,067.16
Check	8/1/2011	EFT	Chevron	Fuel	Nelva	21.07	2,088.23
Check	8/2/2011	EFT	Chevron	Fuel	Nelva	20.62	2,108.85
Check	8/8/2011	EFT	Chevron	Fuel	Nelva	25.37	2,134.22
Check	8/9/2011	EFT	Chevron	Fuel	Nelva	26.27	2,160.49
Check	8/10/2011	EFT	Exxon Mobil	Fuel	Nelva	25.53	2,186.02
Check	8/15/2011	EFT	Chevron	Fuel	Nelva	25.41	2,211.43
Check	8/17/2011	EFT	Chevron	Fuel	Nelva	26.21	2,237.64
Check	8/22/2011	EFT	Chevron	Fuel	Nelva	25.52	2,263.16
Check	8/23/2011	EFT	Chevron	Fuel	Nelva	22.25	2,285.41
Check	8/25/2011	EFT	Chevron	Fuel	Nelva	15.14	2,300.55
Check	8/29/2011	EFT	Chevron	Fuel	Nelva	20.14	2,320.69
Check	8/31/2011	EFT	Chevron	Fuel	Nelva	20.16	2,340.85
Check	9/6/2011	EFT	Chevron	Fuel	Nelva	21.50	2,362.35
Check	9/6/2011	EFT	Chevron	Fuel	Nelva	16.07	2,378.42
Check	9/6/2011	EFT	Chevron	Fuel	Nelva	14.34	2,392.76
Check	9/7/2011	EFT	Chevron	Fuel	Nelva	21.15	2,413.91
Check	9/13/2011	EFT	Exxon Mobil	Fuel	Nelva	23.96	2,437.87
Check	9/15/2011	EFT	Chevron	Fuel	Nelva	20.57	2,458.44
Check	9/19/2011	EFT	Chevron	Fuel	Nelva	20.23	2,478.67
Check	9/22/2011	EFT	Chevron	Fuel	Nelva	23.31	2,501.98
Check	9/27/2011	EFT	Chevron	Fuel	Nelva	25.07	2,527.05
Check	9/30/2011	EFT	Chevron	Fuel	Nelva	23.30	2,550.35
Check	10/3/2011	EFT	Chevron	Fuel	Nelva	25.22	2,575.57
Check	10/5/2011	EFT	Exxon Mobil	Fuel	Nelva	20.11	2,595.68
Check	10/6/2011	EFT	Chevron	Fuel	Nelva	20.52	2,616.20
Check	10/11/2011	EFT	Chevron	Fuel	Nelva	21.07	2,637.27
Check	10/12/2011	EFT	Chevron	Fuel	Nelva	22.02	2,659.29
Check	10/12/2011	EFT	Exxon Mobil	Fuel	Nelva	2.14	2,661.43
Check	10/14/2011	EFT	Chevron	Fuel	Nelva	24.70	2,686.13
Check	10/17/2011	EFT	Chevron	fuel	Nelva	21.07	2,707.20
Check	10/17/2011	EFT	Chevron	Fuel	Nelva	20.92	2,728.12
Check	10/19/2011	ETVFT	Chevron	Fuel	Nelva	21.78	2,749.90
Check	10/26/2011	eft	Exxon Mobil	fUEL	Nelva	20.25	2,770.15
Check	10/27/2011	EFT	Chevron	Fuel	Nelva	20.99	2,791.14
Check	10/31/2011	EFT	Chevron	Fuel	Nelva	22.72	2,813.86
Check	10/31/2011	EFT	Chevron	Fuel	Nelva	21.06	2,834.92
Check	11/2/2011	EFT	Chevron	Fuel	Nelva	20.90	2,855.82
Check	11/4/2011	EFT	Chevron	Fuel	Nelva	19.91	2,875.73
Check	11/7/2011	EFT	Chevron	Fuel	Nelva	22.79	2,898.52
Check	11/9/2011	EFT	Chevron	Fuel	Nelva	20.41	2,918.93
Check	11/14/2011	eft	Chevron	fUEL	Nelva	25.76	2,944.69
Check	11/14/2011	eft	Chevron	Fuel	Nelva	21.07	2,965.76
Total Automobile Expense						2,965.76	2,965.76
Bank & Brokerage Charges							
Check	12/23/2010	EFT	Bank of America	External Transfer Fee	Nelva	3.00	3.00
General Journal	12/28/2010	EJ20101214		Offset Admin Fee	Elmer	-13.88	-10.88
Check	12/30/2010	EFT	Bank of America	Check Order	Nelva	27.00	16.12
General Journal	1/6/2011	EJ20110106		Advisory Solutions Program Fee	Elmer	305.91	322.03
Check	1/13/2011	EFT	Bank of America	Check Order	Nelva	26.00	348.03
Check	1/18/2011	EFT	Bank of America	NSF Returned Item Fee for Activity	Nelva	35.00	383.03
Check	1/18/2011	EFT	Bank of America	NSF Overdraft Item Fee For Activity	Nelva	35.00	418.03
Check	1/19/2011	EFT	Bank of America	NSF: Returned Item Fee for Activity	Nelva	35.00	453.03
Check	1/20/2011	EFT	Bank of America	External Transfer Fee	Survivor	3.00	456.03
General Journal	1/27/2011	EJ20110108		Offset of Admin Fee	Elmer	-12.41	443.62
General Journal	1/27/2011	EJ20120456		Fee Refund Nbkhuz8 - Reimbursement	Nelva	-105.00	338.62
General Journal	2/4/2011	EJ20110203		Redeem JPM Fed Money Market Instl Cl	Elmer	297.60	636.22
General Journal	2/23/2011	EJ20110205		Fee Offset Less Admin Fee	Elmer	-11.67	624.55
General Journal	3/4/2011	EJ20110303		Redeem JPM Fed Money Market Inst	Elmer	273.03	897.58
General Journal	3/11/2011	DR12110301		Svc Fee on Reinvestment of Dividends on Chevron Stock	Family	3.00	900.58
General Journal	3/23/2011	EJ20110306		Fee Offset Less Admin Fee	Elmer	-13.01	887.57
General Journal	4/5/2011	EJ20110403		Redeem JPM Fed Money Market Instl Cl	Elmer	300.68	1,188.25
General Journal	4/21/2011	EJ20110404		Fee Offset Less Admin Fee	Elmer	-11.70	1,176.55
General Journal	5/5/2011	EJ20110502		Redeem JPM Fed Money Market Instl	Elmer	295.92	1,472.47
General Journal	5/17/2011	EJ20110503		Fee Offset Less Admin Fee	Elmer	-12.12	1,460.35
General Journal	6/1/2011	EJ20110602		Minimum Balance Fee	Survivor	3.00	1,463.35
General Journal	6/1/2011	EJ20110601		Redeem JPM Fed Money Market Instl Cl	Elmer	305.34	1,768.69
Check	6/14/2011	EFT	Bank of America	External Transfer Fee - 3 Day bank charge	Survivor	3.00	1,771.69
General Journal	6/22/2011	EJ20110604		Fee Offset Less Admin Fee	Elmer	-11.59	1,760.10
Check	6/23/2011	EFT	Bank of America	Check order fee	Nelva	23.00	1,783.10
General Journal	7/8/2011	EJ20110703		Redeemed JPM Fed Money Market Instl Cl	Elmer	288.60	2,071.70
Check	7/20/2011	EFT	Bank of America	Safebox Fee	Survivor	8.00	2,079.70
General Journal	7/26/2011	EJ20110704		Fee Offset Less Admin Fee	Elmer	-12.20	2,067.50
Check	7/27/2011	EFT	Bank of America	External transfer fee - 3 Day	Survivor	3.00	2,070.50
General Journal	8/4/2011	EJ20110802		Redeemed JPM Fed Money Market Instl Cl	Elmer	302.09	2,372.59
General Journal	8/25/2011	EJ20110803		Fee Offset Less Admin Fee	Elmer	-11.67	2,360.92
General Journal	9/7/2011	EJ20110902		Redeemed JPM Fed Money Market Instl C	Elmer	279.62	2,640.54
General Journal	9/22/2011	EJ20110906		Fee Offset Less Admin Fee	Elmer	-13.30	2,627.24
General Journal	10/6/2011	EJ20111003		Redeemed JPM Fed Money Market Instl Cl	Elmer	260.78	2,888.02
General Journal	10/25/2011	EJ20111005		Fee Offset Less Admin Fee	Elmer	-14.31	2,873.71
General Journal	11/1/2011	EJ20110145		Minnesota Life DES:Annuity ID:0	Survivor	91.78	2,965.49
Check	11/3/2011	EFT	Bank of America	check order	Nelva	23.00	2,988.49
General Journal	11/4/2011	EJ20111103		Redeemed JPM Fed Money Market Instl Cl	Elmer	264.30	3,252.79
Check	11/7/2011	EFT	Bank of America	Wire transfer fee	Survivor	25.00	3,277.79
Check	11/7/2011	EFT	Bank of America	Wire transfer fee	Survivor	25.00	3,302.79

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	11/8/2011	eft	Bank of America	External transfer fee - 3 Day	Survivor	3.00	3,305.79
Check	11/9/2011	EFT	Bank of America	TX Tlr payment to Sdb 2575 banking	Survivor	25.00	3,330.79
General Journal	11/10/2011	EJ20110148		Safe Deposit Box Rent Refund Fde	Survivor	-82.00	3,248.79
Check	11/14/2011	EFT	Bank of America	Safe box fee	Survivor	135.00	3,383.79
General Journal	11/18/2011	EJ20111104		Estate Service Fee	Survivor	100.00	3,483.79
General Journal	11/21/2011	EJ20111105		Wire Transfer Fee	Survivor	25.00	3,508.79
Check	11/21/2011	EFT	Bank of America	wire transfer fee	Survivor	12.00	3,520.79
General Journal	11/22/2011	EJ20111104		Fee Offset Less Admin Fee	Elmer	-13.47	3,507.32
Check	12/1/2011	Debit	Bank of America-Brun...	Check order	Survivor	26.00	3,533.32
General Journal	12/9/2011	EJ20111211		Estate Valuation Fee	Survivor	50.00	3,583.32
General Journal	12/23/2011	EJ20111223		Fee Offset Less Admin Fee	Elmer	-13.85	3,569.47
General Journal	12/31/2011	EJ20111204		Redeem JPMorgan Fed Money Market Inst Cl	Elmer	256.62	3,826.09
General Journal	1/6/2012	EJ20120103		Redeemed JP Morgan Fed Mon Mkt	Elmer	264.78	4,090.87
Check	1/11/2012	EFT	Bank of America		Elmer	14.00	4,104.87
General Journal	1/19/2012	EJ20120105		Fee Offset Less Admin Fee	Elmer	-13.09	4,091.78
General Journal	2/3/2012	EJ20120203		Redeemed JP Morgan Fed Mon Mkt Inst Cl	Elmer	269.92	4,361.70
General Journal	2/24/2012	EJ20120204		Fee Offset Less Admin Fee	Elmer	-12.21	4,349.49
General Journal	2/28/2012	EJ20120221		Annual Service Fee	Survivor	40.00	4,389.49
Check	3/5/2012	TXFR	Bank of America	External transfer fee - 3 day	Survivor	3.00	4,392.49
General Journal	3/8/2012	EJ20120303		Redeem JP Morgan Fed Mon Mkt Inst Cl	Elmer	260.41	4,652.90
Check	3/15/2012	EFT	Bank of America		Elmer	31.00	4,683.90
Check	3/16/2012	EFT	Bank of America	Returned Item Chargeback Fee	Survivor	12.00	4,695.90
Check	3/16/2012	EFT	Bank of America	Returned Item Chargeback - Met Life dupl check	Survivor	70.30	4,766.20
General Journal	3/28/2012	EJ20120307		Fee Offset Less Admin Fee	Elmer	-12.62	4,753.58
General Journal	4/5/2012	EJ20120403		Redeem JP Morgan Fed Mon Mkt	Elmer	283.77	5,037.35
General Journal	4/20/2012	EJ20120404		Fee Offset Less Admin Fee	Elmer	-11.53	5,025.82
General Journal	5/4/2012	EJ20120503		Redeem JP Morgan Fed Mon Mkt	Elmer	272.29	5,298.11
General Journal	5/30/2012	EJ20120506		Fee Offset Less Admin Fee	Elmer	-11.98	5,286.13
General Journal	6/5/2012	EJ20120603		Redeem JP Morgan Fed Mon Mkt	Elmer	272.55	5,558.68
General Journal	6/25/2012	EJ20120607		Fee Offset Les Admin Fee	Elmer	-12.29	5,546.39
General Journal	7/6/2012	EJ20120703		Redeem JP Morgan Fed Mon Mkt	Elmer	259.71	5,806.10
Check	7/17/2012	EFT	Bank of America	External transfer fee - 3 Day	Survivor	3.00	5,809.10
General Journal	7/27/2012	EJ20120704		Fee Offset Less Admin Fee	Elmer	-16.56	5,792.54
General Journal	8/3/2012	EJ20120803		Redeem JP Morgan Fed Mon Mkt	Elmer	275.06	6,067.60
General Journal	8/23/2012	EJ20120804		Fee Offset Less Admin Fee	Elmer	-16.69	6,050.91
General Journal	9/7/2012	EJ20120903		Redeem JP Morgan Fed Mon Mkt	Elmer	281.37	6,332.28
General Journal	9/25/2012	EJ20120907		Fee Offset Less Admin Fee	Elmer	-16.75	6,315.53
General Journal	10/4/2012	EJ20121003		Redeem JP Morgan Fed Mon Mkt	Elmer	278.62	6,594.15
General Journal	10/24/2012	EJ20121006		Fee Offset Less Admin Fee	Elmer	-17.20	6,576.95
General Journal	11/6/2012	EJ20121103		Redeem JP Morgan Fed Mon Mkt	Elmer	288.03	6,864.98
General Journal	11/30/2012	EJ20121104		Fee Offset Less Admin Fee	Elmer	-17.01	6,847.97
General Journal	12/6/2012	EJ20121203		Redeem JP Morgan Fed Mon Mkt	Elmer	275.75	7,123.72
General Journal	12/21/2012	EJ20121211		Fee Offset Less Admin Fee	Elmer	-17.22	7,106.50
General Journal	1/7/2013	EJ20130102		Redeem JP Morgan Fed Mon Mkt	Elmer	290.80	7,397.30
General Journal	1/25/2013	EJ20130104		Fee Offset Less Admin Fee	Elmer	-16.98	7,380.32
General Journal	2/5/2013	EJ20130203		Redeem JP Morgan Fed Mon Mkt	Elmer	299.80	7,680.12
General Journal	2/22/2013	EJ20130204		Fee Offset Less Admin Fee	Elmer	-17.22	7,662.90
General Journal	2/28/2013	EJ20130222		Annual Fee	Survivor	40.00	7,702.90
General Journal	3/7/2013	EJ20130303		Redeem JP Morgan Fed Mon Mkt	Elmer	273.58	7,976.48
General Journal	3/19/2013	EJ20130306		Fee Offset Less Admin Fee	Elmer	-18.33	7,958.15
General Journal	4/9/2013	EJ20130403		Redeem JP Morgan Fed Mon Mkt	Elmer	306.53	8,264.68
General Journal	4/18/2013	EJ20130404		Fee Offset Less Admin Fee	Elmer	-17.32	8,247.36
Check	4/30/2013	EFT	Bank of America	Monthly Fee	Nelva	12.00	8,259.36
General Journal	5/7/2013	EJ20130503		Redeem JP Morgan Fed Mon Mkt	Elmer	298.51	8,557.87
General Journal	5/28/2013	EJ20130504		Fee Offset Less Admin Fee	Elmer	-17.25	8,540.62
Total Bank & Brokerage Charges						8,540.62	8,540.62
Checks/Cash to Family Members							
Check	12/21/2010	6849	Amy Brunsting Tschir...	Christmas Gifts	Nelva	200.00	200.00
Check	12/21/2010	EFT	Amy Brunsting Tschir...	Transfer Confirmation #6403973884	Nelva	7,000.00	7,200.00
Check	12/31/2010	ATM	Cash	TX Tr Cash Withdrawal at Banking Center Town and Country	Nelva	25.00	7,225.00
Check	1/12/2011	ATM	Cash	ATM 01/11 #000007185	Nelva	40.00	7,265.00
Check	1/19/2011	EFT	Amy Tschirhart	ties to G Vie letter/sch's dated 7/15/13	Survivor	6,000.00	13,265.00
Check	1/25/2011	ATM	Cash	ATM - Cash 01/25 #000006811	Nelva	10.00	13,275.00
Check	1/25/2011	115	Cash	CAsh	Nelva	100.00	13,375.00
Check	2/22/2011	140	Cash	Cash	Nelva	100.00	13,475.00
Check	3/14/2011	149	Candace Curtis		Nelva	25.00	13,500.00
Check	3/20/2011	7007	Amy Brunsing	Reimbursement for supplies	Survivor	40.00	13,540.00
Check	4/7/2011	EFT	Candace Curtis	Gifts Given/ref acct 2272/ties to G Vie letter/sch's dated 7/15/13	Survivor	3,000.00	16,540.00
Check	4/21/2011	EFT	Best uy	Tino phone	Nelva	376.38	16,916.38
Check	5/10/2011	7014	TDECU	Luke Truck, ties to G Vie letter/sch's dated 7/15/13	Survivor	5,443.22	22,359.60
Check	5/27/2011	7016	The Victoria Col	Luke college -in lieu of Anita Trustee fee per G Vie letter	Survivor	461.00	22,820.60
Check	6/2/2011	EFT	Iowa 529	Kt college - Ach DES:Contribution ID:0000	Survivor	500.00	23,320.60
Check	6/3/2011	EFT	Am-Honda	For Katie DES:PMT ID:000001032223 ties to G Vie letter/sch's ...	Survivor	5,750.51	29,071.11
Check	6/6/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:11...	Survivor	2,358.75	31,429.86
Check	6/8/2011	TXFR	Candace Curtis	Candy Curtis to ckg ...2272 ties to G Vie letter/sch's dated 7/15...	Survivor	2,000.00	33,429.86
Check	6/13/2011	TXFR	Amy Tschirhart	Reimbursement - Supplies to fix house	Survivor	100.00	33,529.86
Check	6/23/2011	240	Luke Riley	Household yard work	Nelva	25.00	33,554.86
Check	6/27/2011	EFT	Bank of America Cre...	in lieu of Anita Trustee fee as per G Vie letter $ amt. transposed...	Survivor	2,364.34	35,919.20
Check	7/6/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:114...	Survivor	2,976.35	38,895.55
Check	7/15/2011	EFT	Bank of America Cre...	Cr Card pymt in lieu of Trustee fee Anita, G Vie letter and Trust ...	Survivor	7,242.83	46,138.38
Check	7/18/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letterDES:EPAY ID:115...	Survivor	1,998.19	48,136.57
Check	7/26/2011	EFT	Amy Tschirhart	Reimbursement supplies to fix house	Survivor	100.00	48,236.57
Check	8/24/2011	EFT	Candace Curtis	ties to G Vie letter/sch's dated 7/15/13	Survivor	2,000.00	50,236.57
Check	8/24/2011	EFT	Candace Curtis	to chk 2839	Nelva	75.00	50,311.57
Check	8/25/2011	EFT	Candace Curtis	to chk 2839	Nelva	15.00	50,326.57
Check	8/25/2011	EFT	Candace Curtis	to chk 2839	Nelva	15.00	50,341.57
Check	8/26/2011	EFT	UTSA Admissions	Luke college - Education	Survivor	575.00	50,916.57

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	9/6/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:117...	Survivor	999.04	51,915.61
Check	9/7/2011	EFT	Candace Curtis	to chk 2839	Nelva	125.00	52,040.61
Check	9/8/2011	EFT	Candace Curtis	to chk 2839	Nelva	550.00	52,590.61
Check	9/23/2011	EFT	Bank of America Cre...	in lieu of Anita Trustee fee as per G Vie letter date on his sch 9/7	Survivor	4,767.36	57,357.97
Check	10/4/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:118...	Survivor	2,390.35	59,748.32
Check	10/5/2011	EFT	Candace Curtis	to chk 2839``	Nelva	500.00	60,248.32
Check	10/18/2011	356	Nelva Brunsting	Cash	Nelva	50.00	60,298.32
Check	10/19/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:120...	Survivor	2,033.30	62,331.62
Check	10/21/2011	7032	Vehs Bankd Boosters	Katy band	Survivor	280.00	62,611.62
Check	10/26/2011	EFT	Candace Curtis	ties to G Vie letter/sch's dated 7/15/13	Survivor	2,000.00	64,611.62
Check	11/1/2011	TXFR	Luke Riley	Luke College ties to G Vie letter/sch's dated 7/15/13	Survivor	2,000.00	66,611.62
Check	11/3/2011	EFT	Bank of America Cre...	in lieu of Anita Trustee fee as per G Vie letter his sch had 10/6 d...	Survivor	102.52	66,714.14
Check	11/7/2011	EFT	Anita Brunsting	Legal fees Wire Type:Wire Out Date:111107 T to anita for futu...	Survivor	10,000.00	76,714.14
Check	11/7/2011	EFT	Amy Brunsing	Legal fees Wire TypeL Wire Out Date:111107 T to amy for f...	Survivor	10,000.00	86,714.14
Check	11/7/2011	EFT	Amy Tschirhart	Reimbursement - for supplies to fix house	Survivor	1,000.00	87,714.14
Check	11/8/2011	EFT	Chase Credit Card	in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID: 121...	Survivor	3,274.51	90,988.65
Check	11/10/2011	EFT	Candace Curtis	ties to G Vie letter/sch's dated 7/15/13	Survivor	2,000.00	92,988.65
Check	1/25/2012	111	Amy Brunsing	Reimbursement - moving/repair expenses	Survivor	425.94	93,414.59
Check	2/27/2012	TXFR	Carole Brunsting	Reimbursement - leveling house	Survivor	10,000.00	103,414.59
Check	3/2/2012	TXFR	Amy Brunsing	Reimbursement trust expenses	Survivor	841.45	104,256.04
Check	3/2/2012	TXFR	Carole Brunsting	Reimbursement - leveling house	Survivor	2,537.50	106,793.54
Check	3/5/2012	TXFR	Carole Brunsting	Reimbursement - leveling house	Survivor	10,000.00	116,793.54
Check	3/6/2012	TXFR	Carole Brunsting	Reimbursement - leveling house	Survivor	3,117.50	119,911.04
General Journal	3/13/2012	EJ20120410	Amy Brunsting	Reimbursement	Survivor	-10,000.00	109,911.04
General Journal	3/13/2012	EJ20120412	Anita Brunsting	Reimbursement	Survivor	-10,040.00	99,871.04
Check	4/16/2012	122	Candace Curtis	Remainder of Life Ins Trust - Other Income	Survivor	60.00	99,931.04
Check	4/16/2012	123	Carl Brunsting	Remainder of Life Ins Trust	Survivor	60.00	99,991.04
Check	4/16/2012	124	Amy Brunsing	Remainder of Life Ins Trust - Other Inc	Survivor	60.00	100,051.04
Check	4/16/2012	125	Carole Brunsting	Remainder of Life Ins Trust - Other Inc	Survivor	60.00	100,111.04
Check	4/16/2012	127	Anita Brunsting	Remainder of Life Ins Trust - Other Inc	Survivor	44.65	100,155.69
Check	4/20/2012	EFT	Carole Brunsting	Moving Expenses Reimbursement	Survivor	1,563.50	101,719.19
Check	4/25/2012	131	Anita Brunsting	Legal fees Reimbursement for Retainer to Chip Mathews	Survivor	5,000.00	106,719.19
Check	4/25/2012	130	Anita Brunsting	Reimbursement for UPS to mail boxes to S Mills	Survivor	102.11	106,821.30
Check	5/16/2012	101	Anita Brunsting	Reimbursement for 1/2 farm tax	Elmer	1,679.43	108,500.73
Check	7/16/2012	TXFR	Amy Brunsing	Trust expenses - Reimbursement	Survivor	353.43	108,854.16
Check	9/10/2012	139	Anita Brunsting	Reimburse postage	Survivor	61.75	108,915.91
Check	9/10/2012	140	Anita Brunsting	Stamps reimbursement	Survivor	9.00	108,924.91
Total Checks/Cash to Family Members						108,924.91	108,924.91
Dues and Subscriptions							
Check	3/15/2011	154	Birds and Blooms		Nelva	10.00	10.00
Check	4/25/2011	187	Doan Press		Nelva	26.50	36.50
Check	8/17/2011	294	Houston Chronicle		Nelva	138.00	174.50
Check	8/18/2011	292	Time Magazine		Nelva	20.00	194.50
Check	9/21/2011	322	Iowa Outdoors		Nelva	15.00	209.50
Check	9/10/2012	137	Houston Chronicle	final payment - subscription	Survivor	68.97	278.47
Total Dues and Subscriptions						278.47	278.47
Food/Dining/Groceries							
Check	12/21/2010	6848	Randalls		Nelva	60.51	60.51
Check	1/10/2011	EFT	Randalls	01/09 #000555055	Nelva	234.97	295.48
Check	1/18/2011	EFT	Kroger		Nelva	32.33	327.81
Check	1/24/2011	EFT	Randalls	01/23 #000635058	Nelva	35.89	363.70
Check	1/24/2011	EFT	Chick-fil-a #0103	Dining	Nelva	3.29	366.99
Check	1/31/2011	EFT	Randalls		Nelva	51.87	418.86
Check	1/31/2011	EFT	Randalls		Nelva	47.24	466.10
Check	1/31/2011	EFT	Chick-fil-a #0103	Dining	Nelva	3.29	469.39
Check	2/7/2011	EFT	Randalls		Nelva	71.64	541.03
Check	2/14/2011	EFT'	Randalls		Nelva	23.68	564.71
Check	2/14/2011	EFT	Randalls		Nelva	76.92	641.63
Check	2/18/2011	EFT	Kroger		Nelva	27.33	668.96
Check	2/22/2011	EFT	Subway	Dining	Nelva	3.25	672.21
Check	2/22/2011	EFT	Chick-fil-a #0103	Dining	Nelva	5.83	678.04
Check	2/22/2011	EFT	Randalls		Nelva	47.02	725.06
Check	2/22/2011	EFT	Wal-Mart		Nelva	46.27	771.33
Check	2/22/2011	EFT	Randalls		Nelva	8.68	780.01
Check	2/22/2011	EFT	Walgreens		Nelva	28.12	808.13
Check	2/24/2011	EFT	Randalls		Nelva	24.39	832.52
Check	3/7/2011	EFT	Randalls		Nelva	24.30	856.82
Check	3/7/2011	EFT	Chick-fil-a #0103		Nelva	3.29	860.11
Check	3/7/2011	EFT	Randalls		Nelva	9.77	869.88
Check	3/7/2011	eft	Wal-Mart		Nelva	11.89	881.77
General Journal	3/7/2011	EJ20120461		DEBIT 1943	Nelva	-6.48	875.29
Check	3/8/2011	eft	Subway		Nelva	3.25	878.54
Check	3/14/2011	EFT	Randalls		Nelva	29.21	907.75
Check	3/14/2011	EFT	Chick-fil-a #0103	Dining	Nelva	14.16	921.91
Check	3/14/2011	EFT	Randalls		Nelva	13.23	935.14
Check	3/14/2011	EFT	Taco Cabana	Dining	Nelva	6.48	941.62
Check	3/14/2011	EFT	Chick-fil-a #0103	Dining	Nelva	3.29	944.91
Check	3/14/2011	EFT	Chick-fil-a #0103	Dining	Nelva	1.83	946.74
Check	3/14/2011	EEFT	Taco Cabana	Dining	Nelva	8.63	955.37
Check	3/16/2011	EFT	Randalls		Nelva	60.94	1,016.31
Check	3/16/2011	EFT	Randalls		Nelva	12.44	1,028.75
Check	3/18/2011	EFT	Randalls		Nelva	69.77	1,098.52
Check	3/21/2011	EFT	Taco Cabana	Dining	Nelva	22.68	1,121.20
Check	3/21/2011	EFT	Taco Cabana	Dining	Nelva	23.77	1,144.97
Check	3/21/2011	EFT	Wal-Mart		Nelva	114.67	1,259.64
Check	3/21/2011	EFT	Randalls		Nelva	16.37	1,276.01

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	3/21/2011	EFT	Randalls		Neiva	13.11	1,291.12
Check	3/28/2011	EFT	Randalls		Neiva	36.05	1,327.17
Check	3/29/2011	EFT	Subway	Dining	Neiva	4.33	1,331.50
Check	3/30/2011	EFT	Randalls		Neiva	8.85	1,340.35
Check	4/4/2011	EFT	Wal-Mart		Neiva	37.28	1,377.63
Check	4/4/2011	EFT	Randalls		Neiva	34.54	1,412.17
Check	4/4/2011	EFT	Randalls		Neiva	52.52	1,464.69
Check	4/5/2011	EFT	Subway	Dining	Neiva	3.25	1,467.94
Check	4/6/2011	EFT	Randalls		Neiva	34.97	1,502.91
Check	4/8/2011	EFT	Randalls		Neiva	15.87	1,518.78
Check	4/11/2011	EFT	Subway	Dining	Neiva	3.79	1,522.57
Check	4/11/2011	EFT	Chick-fil-a #0103	Dining	Neiva	1.83	1,524.40
Check	4/11/2011	EFT	Chick-fil-a #0103	Dining	Neiva	1.83	1,526.23
Check	4/11/2011	EFT	Randalls		Neiva	16.56	1,542.79
Check	4/11/2011	EFT	Randalls		Neiva	51.94	1,594.73
Check	4/12/2011	EFT	Subway	Dining	Neiva	3.25	1,597.98
Check	4/12/2011	EFT	Randalls		Neiva	34.69	1,632.67
Check	4/13/2011	EFT	Randalls		Neiva	67.04	1,699.71
Check	4/14/2011	EFT	Randalls		Neiva	24.03	1,723.74
Check	4/15/2011	EFT	Chick-fil-a #0103	Dining	Neiva	10.25	1,733.99
Check	4/18/2011	EFT	Randalls		Neiva	26.45	1,760.44
Check	4/18/2011	EFT	Randalls		Neiva	23.16	1,783.60
Check	4/18/2011	EFT	Randalls		Neiva	17.30	1,800.90
Check	4/22/2011	EFT	Randalls		Neiva	57.60	1,858.50
Check	4/25/2011	EFT	Subway	Dining	Neiva	3.79	1,862.29
Check	4/25/2011	EFT	Subway	Dining	Neiva	3.79	1,866.08
Check	4/25/2011	EFT	Taco Cabana	Dining	Neiva	22.68	1,888.76
Check	4/25/2011	EFT	Randalls		Neiva	86.07	1,974.83
Check	5/2/2011	EFT	Randalls		Neiva	140.07	2,114.90
Check	5/3/2011	EFT	Randalls		Neiva	36.75	2,151.65
Check	5/6/2011	EFT	Randalls		Neiva	17.30	2,168.95
Check	5/9/2011	EFT	Randalls		Neiva	33.74	2,202.69
Check	5/9/2011	EFT	Randalls		Neiva	55.52	2,258.21
Check	5/11/2011	EFT	Randalls		Neiva	10.39	2,268.60
Check	5/16/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	2,271.89
Check	5/16/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	2,275.18
Check	5/18/2011	EFT	Randalls		Neiva	42.56	2,317.74
Check	5/20/2011	EFT	Randalls		Neiva	21.87	2,339.61
Check	5/23/2011	EFT	Randalls		Neiva	57.35	2,396.96
Check	5/25/2011	EFT	Randalls	Dining	Neiva	43.52	2,440.48
Check	5/31/2011	EFT	Randalls		Neiva	31.71	2,472.19
Check	6/3/2011	EFT	Randalls		Neiva	23.46	2,495.65
Check	6/6/2011	EFT	Kroger		Neiva	32.17	2,527.82
Check	6/6/2011	EFT	Randalls		Neiva	23.97	2,551.79
Check	6/6/2011	EFT	Randalls		Neiva	20.00	2,571.79
Check	6/6/2011	EFT	Fastop	Dining	Neiva	4.25	2,576.04
Check	6/13/2011	EFT	McDonald's	Dining	Neiva	13.46	2,589.50
Check	6/13/2011	EFT	Kroger		Neiva	3.05	2,592.55
Check	6/13/2011	EFT	Randalls		Neiva	43.77	2,636.32
Check	6/13/2011	EFT	Randalls		Neiva	54.05	2,690.37
Check	6/14/2011	EFT	McDonald's	Dining	Neiva	2.17	2,692.54
Check	6/20/2011	EFT	Randalls		Neiva	24.19	2,716.73
Check	6/24/2011	EFT	Randalls		Neiva	41.68	2,758.41
Check	6/28/2011	EFT	Randalls		Neiva	50.83	2,809.24
Check	7/1/2011	EFT	Randalls		Neiva	18.92	2,828.16
Check	7/5/2011	EFT	Randalls		Neiva	25.61	2,853.77
Check	7/5/2011	EFT	Randalls		Neiva	34.05	2,887.82
Check	7/8/2011	EFT	Chick-fil-a #0103	Dining	Neiva	5.13	2,892.95
Check	7/8/2011	EFT	Randalls		Neiva	46.61	2,939.56
Check	7/11/2011	EFT	Randalls		Neiva	52.99	2,992.55
Check	7/11/2011	EFT	McDonald's	Dining	Neiva	2.48	2,995.03
Check	7/11/2011	EFT	Randalls		Neiva	29.80	3,024.83
Check	7/18/2011	EFT	Randalls		Neiva	35.41	3,060.24
Check	7/18/2011	EFT	Randalls		Neiva	25.14	3,085.38
Check	7/18/2011	EFT	Wal-Mart		Neiva	260.73	3,346.11
Check	7/21/2011	EFT	Randalls		Neiva	45.34	3,391.45
Check	7/25/2011	EFT	Randalls		Neiva	43.38	3,434.83
Check	7/25/2011	EFT	Randalls		Neiva	60.57	3,495.40
Check	7/25/2011	EFT	Kolache Factory	Dining	Neiva	3.76	3,499.16
Check	7/28/2011	EFT	Randalls		Neiva	31.23	3,530.39
Check	7/28/2011	EFT	Randalls		Neiva	26.20	3,556.59
Check	7/29/2011	EFT	Chick-fil-a #0103	Dining	Neiva	1.83	3,558.42
Check	8/1/2011	EFT	Randalls		Neiva	47.94	3,606.36
Check	8/1/2011	EFT	Walgreens		Neiva	20.99	3,627.35
Check	8/1/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	3,630.64
Check	8/2/2011	EFT	Randalls		Neiva	29.74	3,660.38
Check	8/4/2011	EFT	McDonald's	Dining	Neiva	2.17	3,662.55
Check	8/5/2011	EFT	Randalls		Neiva	24.92	3,687.47
Check	8/8/2011	EFT	Randalls		Neiva	30.29	3,717.76
Check	8/8/2011	EFT	Randalls	08/06	Neiva	57.90	3,775.66
Check	8/10/2011	EFT	Randalls		Neiva	21.76	3,797.42
Check	8/15/2011	EFT	Randalls		Neiva	58.34	3,855.76
Check	8/15/2011	EFT	Randalls		Neiva	46.75	3,902.51
Check	8/17/2011	EFT	HEB		Neiva	34.39	3,936.90
Check	8/17/2011	EFT	HEB		Neiva	19.77	3,956.67
Check	8/22/2011	EFT	Randalls		Neiva	39.52	3,996.19
Check	8/22/2011	EFT	Randalls		Neiva	44.99	4,041.18
Check	8/24/2011	EFT	Randalls		Neiva	44.36	4,085.54

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	8/24/2011	EFT	Randalls		Neiva	28.74	4,114.28
Check	8/25/2011	EFT	Randalls		Neiva	18.33	4,132.61
Check	8/29/2011	EFT	Randalls		Neiva	36.15	4,168.76
Check	9/2/2011	EFT	Randalls		Neiva	21.71	4,190.47
Check	9/6/2011	EFT	Randalls		Neiva	33.12	4,223.59
Check	9/6/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	4,226.88
Check	9/6/2011	EFT	Randalls		Neiva	68.27	4,295.15
Check	9/7/2011	EFT	Randalls		Neiva	50.29	4,345.44
Check	9/8/2011	EFT	Randalls		Neiva	14.60	4,360.04
Check	9/9/2011	EFT	Chick-fil-a #0103		Neiva	3.29	4,363.33
Check	9/12/2011	EFT	Randalls		Neiva	92.24	4,455.57
Check	9/12/2011	EFT	Randalls		Neiva	20.00	4,475.57
Check	9/19/2011	EFT	Randalls		Neiva	42.84	4,518.41
Check	9/23/2011	EFT	Walgreens		Neiva	11.99	4,530.40
Check	9/26/2011	EFT	Wal-Mart		Neiva	133.75	4,664.15
Check	9/26/2011	EFT	Randalls		Neiva	23.57	4,687.72
Check	9/28/2011	EFT	Randalls		Neiva	14.06	4,701.78
Check	9/28/2011	EFT	Randalls		Neiva	18.90	4,720.68
Check	9/30/2011	EFT	Randalls		Neiva	28.77	4,749.45
Check	9/30/2011	EFT	Randalls		Neiva	19.06	4,768.51
Check	10/3/2011	EFT	Wal-Mart		Neiva	55.92	4,824.43
Check	10/3/2011	EFT	Randalls		Neiva	32.16	4,856.59
Check	10/3/2011	EFT	HEB		Neiva	20.75	4,877.34
Check	10/3/2011	EFT	Randalls		Neiva	8.95	4,886.29
Check	10/4/2011	EFT	Randalls		Neiva	38.92	4,925.21
Check	10/7/2011	EFT	Randalls		Neiva	39.04	4,964.25
Check	10/11/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	4,967.54
Check	10/11/2011	EFT	Randalls		Neiva	26.50	4,994.04
Check	10/11/2011	EFT	Randalls		Neiva	14.06	5,008.10
Check	10/12/2011	ET	Randalls		Neiva	25.47	5,033.57
Check	10/17/2011	EFT	Randalls		Neiva	65.96	5,099.53
Check	10/17/2011	EFT	Randalls		Neiva	45.32	5,144.85
Check	10/17/2011	EFT	Randalls		Neiva	28.98	5,173.83
Check	10/17/2011	EFT	Randalls		Neiva	28.05	5,201.88
Check	10/17/2011	EFT	Randalls		Neiva	17.30	5,219.18
Check	10/17/2011	EFT	McDonald's	Dining	Neiva	6.26	5,225.44
Check	10/19/2011	EFT	Randalls		Neiva	27.71	5,253.15
Check	10/20/2011	EFT	Chick-fil-a #0103	dINING	Neiva	3.29	5,256.44
Check	10/21/2011	eft	Randalls		Neiva	7.61	5,264.05
Check	10/21/2011	eft	Chick-fil-a #0103	dINING	Neiva	3.29	5,267.34
Check	10/24/2011	EFT	Randalls		Neiva	41.88	5,309.22
Check	10/24/2011	eft	Chick-fil-a #0103	dINING	Neiva	3.29	5,312.51
Check	10/25/2011	eft	Randalls		Neiva	52.17	6,364.68
Check	10/26/2011	eft	Randalls		Neiva	42.23	5,406.91
Check	10/26/2011	EFT	Subway	Dining	Neiva	14.70	5,421.61
Check	10/31/2011	EFT	Randalls		Neiva	94.10	5,515.71
Check	10/31/2011	EFT	Randalls		Neiva	20.33	5,536.04
Check	10/31/2011	EFT	Randalls		Neiva	6.90	5,542.94
Check	11/1/2011	EFT	Randalls		Neiva	33.16	5,576.10
Check	11/2/2011	EFT	Randalls	Fuel	Neiva	25.78	5,601.88
Check	11/4/2011	EFT	Randalls		Neiva	10.00	5,611.88
Check	11/4/2011	EFT	Randalls		Neiva	53.01	5,664.89
Check	11/7/2011	EFT	Au Bon Pain-memo	Dining	Neiva	3.94	5,668.83
Check	11/7/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	5,672.12
Check	11/7/2011	EFT	McDonald's	Dining	Neiva	1.08	5,673.20
Check	11/7/2011	EFT	Randalls		Neiva	33.51	5,706.71
Check	11/7/2011	EFT	Randalls		Neiva	34.35	5,741.06
Check	11/8/2011	EFT	Randalls		Neiva	17.84	5,758.90
Check	11/8/2011	EFT	McDonald's	Dining	Neiva	6.70	5,765.60
Check	11/8/2011	EFT	Randalls		Neiva	48.45	5,814.05
Check	11/9/2011	EFT	HEB		Neiva	43.40	5,857.45
Check	11/14/2011	eft	Randalls		Neiva	32.71	5,890.16
Check	11/14/2011	eft	Randalls		Neiva	30.92	5,921.08
Check	11/14/2011	eft	Randalls		Neiva	22.41	5,943.49
Check	11/14/2011	EFT	McDonald's	Dining	Neiva	8.60	5,952.09
Check	11/14/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	5,955.38
Check	11/14/2011	EFT	Chick-fil-a #0103	Dining	Neiva	3.29	5,958.67
Total Food/Dining/Groceries						5,958.67	5,958.67
Funeral							
Check	11/12/2011	7033	Memorial Oaks		Survivor	1,595.00	1,595.00
Check	11/14/2011	7035	Memorial Oaks		Survivor	1,511.29	3,106.29
Check	11/15/2011	7036	Memorial Oaks	Organist	Survivor	150.00	3,256.29
Check	11/15/2011	7037	Bob Johnson	pastor	Survivor	300.00	3,556.29
Total Funeral						3,556.29	3,556.29
Household							
Check	1/20/2011	111	Mrs. Gutierrez	Cleaning	Neiva	70.00	70.00
Check	2/11/2011	125	Mrs. Gutierrez	Cleaning	Neiva	70.00	140.00
Check	2/18/2011	161	Mrs. Gutierrez	Cleaning	Neiva	70.00	210.00
Check	2/22/2011	EFT	Southwest Fertilizer		Neiva	8.73	218.73
Check	2/28/2011	EFT	Southwest Fertilizer		Neiva	59.73	278.46
Check	2/28/2011	EFT	Radio Shack		Neiva	94.13	372.59
Check	3/1/2011	EFT	Home Depot		Neiva	20.55	393.14
Check	3/25/2011	169	Mrs. Gutierrez	Cleaning	Neiva	70.00	463.14
Check	3/28/2011	EFT	Southwest Fertilizer		Neiva	13.39	476.53
Check	4/6/2011	EFT	Southwest Fertilizer		Neiva	9.73	486.26
Check	4/8/2011	179	Mrs. Gutierrez	Cleaning	Neiva	70.00	556.26

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	4/18/2011	EFT	Sou The Home	04/16 #000457501	Nelva	22.83	579.09
Check	4/25/2011	196	Mrs. Gutierrez	Cleaning	Nelva	70.00	649.09
Check	5/3/2011	EFT	Southwest Fertilizer		Nelva	21.98	671.07
Check	5/9/2011	210	Mrs. Gutierrez	Cleaning	Nelva	70.00	741.07
Check	5/23/2011	221	Mrs. Gutierrez	Cleaning	Nelva	70.00	811.07
Check	6/3/2011	237	Mrs. Gutierrez	Cleaning	Nelva	70.00	881.07
Check	6/27/2011	EFT	Sou The Home		Nelva	161.36	1,042.43
Check	7/26/2011	EFT	Southwest Fertilizer	Garden	Nelva	25.88	1,068.31
Check	8/11/2011	300	Maria Vaquera	Cleaning	Nelva	50.00	1,118.31
Check	9/13/2011	EFT	Southwest Fertilizer	Garden	Nelva	18.89	1,137.20
Check	9/26/2011	336	Maria Vaquera	Cleaning	Nelva	50.00	1,187.20
Check	10/6/2011	345	Maria Vaquera	Cleaning	Nelva	50.00	1,237.20
Total Household						1,237.20	1,237.20
Insurance Expense							
Check	1/5/2011	EFT	State Farm Insurance		Survivor	299.93	299.93
Check	2/2/2011	EFT	State Farm Insurance	PPD	Survivor	299.93	599.86
Check	3/2/2011	EFT	State Farm Insurance	PPD	Survivor	299.93	899.79
Check	4/4/2011	EFT	State Farm Insurance	PPD	Survivor	301.36	1,201.15
Check	5/3/2011	EFT	State Farm Insurance		Survivor	300.62	1,501.77
Check	6/2/2011	EFT	State Farm Insurance	PPD	Survivor	300.62	1,802.39
Check	7/5/2011	EFT	State Farm Insurance	PPD	Survivor	300.62	2,103.01
Check	8/2/2011	EFT	State Farm Insurance		Survivor	300.62	2,403.63
Check	9/2/2011	EFT	State Farm Insurance	PPD	Survivor	290.04	2,693.67
Check	10/4/2011	EFT	State Farm Insurance	PPD	Survivor	290.04	2,983.71
Check	11/2/2011	EFT	State Farm Insurance	PPD	Survivor	290.04	3,273.75
Check	12/2/2011	EFT	State Farm Insurance	PPD	Survivor	290.04	3,563.79
Check	1/5/2012	EFT	State Farm Insurance	PPF	Survivor	290.04	3,853.83
Check	2/2/2012	EFT	State Farm Insurance	PPD	Survivor	290.04	4,143.87
Check	3/2/2012	EFT	State Farm Insurance	PPD	Survivor	292.79	4,436.66
Check	4/3/2012	EFT	State Farm Insurance	PPD	Survivor	301.22	4,737.88
Total Insurance Expense						4,737.88	4,737.88
Lawn Care							
Check	2/14/2011	133	Mr. Phan Chan	Household	Nelva	100.00	100.00
Check	3/11/2011	157	Mr. Phan Chan	Household	Nelva	100.00	200.00
Check	3/21/2011	160	Nicolas	Yard work	Nelva	52.00	252.00
Check	4/15/2011	190	Mr. Phan Chan	mowing	Nelva	100.00	352.00
Check	5/20/2011	222	Mr. Phan Chan	mowing	Nelva	100.00	452.00
Check	5/24/2011	226	Fernando	yard work Home repair	Nelva	35.00	487.00
Check	6/27/2011	255	Mr. Phan Chan	mowing	Nelva	125.00	612.00
Check	7/25/2011	280	Mr. Phan Chan	mowing	Nelva	125.00	737.00
Check	9/23/2011	337	Mr. Phan Chan	Household	Nelva	225.00	962.00
Check	10/21/2011	361	Mr. Phan Chan	Household	Nelva	100.00	1,062.00
Check	12/23/2011	105	Mr. Phan Chan	13630 Pinerock	Survivor	200.00	1,262.00
Total Lawn Care						1,262.00	1,262.00
Legal Fees							
Check	1/19/2011	7003	Vacek & Freed PLLC		Survivor	880.15	880.15
Check	3/17/2011	7006	Vacek & Freed PLLC	Legal Fees	Survivor	340.00	1,220.15
Check	6/2/2011	7015	Vacek & Freed PLLC		Survivor	575.59	1,795.74
Check	8/5/2011	7025	Vacek & Freed PLLC	Retainer	Survivor	1,000.00	2,795.74
Check	10/12/2011	7030	DeKoster & DeKoster	farm contract	Survivor	100.00	2,895.74
Check	12/20/2011	101	Vacek & Freed PLLC	Retainer	Survivor	4,500.00	7,395.74
Check	1/3/2012	110	Herb Jamison	House appraisal	Survivor	450.00	7,845.74
Check	4/20/2012	128	Mills Shirley LLP	Suit	Survivor	10,000.00	17,845.74
Check	4/20/2012	129	Bernard Mathews		Survivor	1,029.60	18,875.34
Check	7/18/2012	135	Mills Shirley LLP		Survivor	17,000.00	35,875.34
Check	3/21/2013	142	Mills Shirley LLP		Survivor	437.10	36,312.44
Check	4/2/2013	143	Mills Shirley LLP	George vie Candy's suit	Survivor	10,000.00	46,312.44
General Journal	5/31/2013	EJ20120434		From Mills Shirley - Reimbursement	Survivor	-10,000.00	36,312.44
Total Legal Fees						36,312.44	36,312.44
Medical Expenses							
In Home Care							
Check	12/29/2010	6851	Tino	Faustino Vaquera, Jr	Nelva	1,245.00	1,245.00
Check	12/29/2010	6852	Michael Brooks		Nelva	855.00	2,100.00
Check	1/4/2011	6853	Robert Cantu		Survivor	736.00	2,836.00
Check	1/7/2011	91	Michael Brooks		Nelva	585.00	3,421.00
Check	1/10/2011	92	Tino		Nelva	1,413.14	4,834.14
Check	1/11/2011	93	Robert Cantu		Nelva	605.00	5,439.14
Check	1/13/2011	102	Michael Brooks		Nelva	585.00	6,024.14
Check	1/18/2011	101	Tino		Nelva	1,065.00	7,089.14
Check	1/18/2011	110	Robert Cantu		Nelva	810.00	7,899.14
General Journal	1/19/2011	EJ20120455		Return of Posted Check / Item (Robert Cantu	Nelva	-810.00	7,089.14
Check	1/21/2011	112	Tino		Nelva	1,619.00	8,708.14
Check	1/21/2011	113	Robert Cantu		Nelva	888.00	9,596.14
Check	1/24/2011	114	Robert Cantu		Nelva	1,083.91	10,680.05
Check	1/27/2011	116	Tino		Nelva	906.55	11,586.60
Check	1/28/2011	120	Robert Cantu		Nelva	856.93	12,443.53
Check	2/1/2011	121	Tino		Nelva	1,249.00	13,692.53
Check	2/1/2011	144	Robert Cantu		Nelva	801.80	14,494.33
Check	2/2/2011	122	Robert Cantu		Nelva	460.00	14,954.33
Check	2/4/2011	124	Tino		Nelva	842.00	15,796.33
Check	2/7/2011	126	Robert Cantu		Nelva	807.00	16,603.33
Check	2/11/2011	130	Tino		Nelva	1,166.00	17,769.33
Check	2/11/2011	131	Robert Cantu		Nelva	637.41	18,406.74
Check	2/14/2011	135	Robert Cantu		Nelva	430.00	18,836.74

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	2/17/2011	138	Tino		Neiva	1,454.42	20,291.16
Check	2/18/2011	136	Robert Cantu		Neiva	771.23	21,062.39
Check	2/22/2011	162	Tino		Neiva	1,067.57	22,129.96
Check	2/25/2011	141	Tino		Neiva	826.72	22,956.68
Check	2/25/2011	143	Robert Cantu		Neiva	510.00	23,466.68
Check	3/4/2011	146	Robert Cantu		Neiva	538.68	24,005.36
Check	3/7/2011	148	Tino		Neiva	1,704.19	25,709.55
Check	3/10/2011	155	Michael Brooks		Neiva	285.00	25,994.55
Check	3/10/2011	156	Robert Cantu		Neiva	1,045.67	27,040.22
Check	3/14/2011	158	Tino		Neiva	1,253.02	28,293.24
Check	3/16/2011	159	Michael Brooks		Neiva	55.00	28,348.24
Check	3/18/2011	163	Robert Cantu		Neiva	289.78	28,638.02
Check	3/21/2011	164	Tino		Neiva	1,248.70	29,886.72
Check	3/21/2011	165	Michael Brooks		Neiva	367.50	30,254.22
Check	3/21/2011	166	Robert Cantu		Neiva	360.00	30,614.22
Check	3/23/2011	167	Michael Brooks		Neiva	67.50	30,681.72
Check	3/24/2011	168	Robert Cantu		Neiva	490.86	31,172.58
Check	3/24/2011	170	Tino		Neiva	50.00	31,222.58
Check	3/25/2011	172	Tino		Neiva	1,636.77	32,859.35
Check	3/28/2011	173	Michael Brooks		Neiva	65.00	32,924.35
Check	3/28/2011	174	Robert Cantu		Neiva	701.91	33,626.26
Check	4/1/2011	175	Tino		Neiva	1,689.00	35,315.26
Check	4/4/2011	177	Robert Cantu		Neiva	1,303.48	36,618.74
Check	4/7/2011	178	Michael Brooks		Neiva	184.00	36,802.74
Check	4/8/2011	180	Tino		Neiva	1,475.00	38,277.74
Check	4/11/2011	181	Robert Cantu		Neiva	1,042.10	39,319.84
Check	4/13/2011	185	Michael Brooks		Neiva	75.00	39,394.84
Check	4/15/2011	189	Michael Brooks		Neiva	91.00	39,485.84
Check	4/15/2011	191	Tino		Neiva	1,704.81	41,190.65
Check	4/18/2011	192	Michael Brooks		Neiva	195.00	41,385.65
Check	4/19/2011	194	Michael Brooks		Neiva	216.50	41,602.15
Check	4/20/2011	195	Michael Brooks		Neiva	75.00	41,677.15
Check	4/22/2011	197	Michael Brooks		Neiva	202.00	41,879.15
Check	4/22/2011	198	Tino		Neiva	2,156.83	44,035.98
Check	4/25/2011	199	Robert Cantu		Neiva	215.00	44,250.98
Check	4/25/2011	200	Michael Brooks		Neiva	300.00	44,550.98
Check	4/26/2011	202	Shimeka Hughes		Neiva	1,080.00	45,630.98
Check	4/27/2011	203	Michael Brooks		Neiva	60.00	45,690.98
Check	4/29/2011	204	Robert Cantu		Neiva	645.00	46,335.98
Check	4/29/2011	205	Michael Brooks		Neiva	90.00	46,425.98
Check	5/3/2011	208	Robert Cantu		Neiva	202.50	46,628.48
Check	5/4/2011	207	Tino		Neiva	1,721.11	48,349.59
Check	5/4/2011	209	Michael Brooks		Neiva	270.00	48,619.59
Check	5/6/2011	211	Tino		Neiva	743.00	49,362.59
Check	5/6/2011	212	Michael Brooks		Neiva	67.50	49,430.09
Check	5/8/2011	213	Robert Cantu		Neiva	225.00	49,655.09
Check	5/9/2011	214	Robert Cantu		Neiva	902.30	50,557.39
Check	5/9/2011	215	Michael Brooks		Neiva	202.00	50,759.39
Check	5/12/2011	216	Michael Brooks		Neiva	45.00	50,804.39
Check	5/13/2011	217	Tino		Neiva	1,320.53	52,124.92
Check	5/13/2011	218	Robert Cantu		Neiva	255.00	52,379.92
Check	5/16/2011	219	Robert Cantu		Neiva	868.81	53,248.73
Check	5/16/2011	220	Michael Brooks		Neiva	217.50	53,466.23
Check	5/20/2011	223	Tino		Neiva	1,483.53	54,949.76
Check	5/23/2011	227	Robert Cantu		Neiva	1,026.00	55,975.76
Check	5/23/2011	228	Michael Brooks		Neiva	207.00	56,182.76
Check	5/25/2011	229	Michael Brooks		Neiva	219.50	56,402.26
Check	5/25/2011	231	Michael Brooks		Neiva	227.50	56,629.76
Check	5/27/2011	232	Tino		Neiva	1,621.50	58,251.26
Check	5/31/2011	235	Robert Cantu		Neiva	796.86	59,048.12
Check	5/31/2011	236	Katrina Harper		Neiva	360.00	59,408.12
Check	6/3/2011	239	Tino		Neiva	1,215.36	60,623.48
Check	6/7/2011	241	Robert Cantu		Neiva	1,115.00	61,738.48
Check	6/7/2011	242	Katrina Harper		Neiva	360.00	62,098.48
Check	6/10/2011	243	Tino		Neiva	1,110.00	63,208.48
Check	6/13/2011	244	Robert Cantu		Neiva	720.00	63,928.48
Check	6/13/2011	246	Katrina Harper		Neiva	600.00	64,528.48
Check	6/16/2011	247	Daisy Harper		Neiva	720.00	65,248.48
Check	6/17/2011	248	Robert Cantu		Neiva	930.00	66,178.48
Check	6/20/2011	250	Katrina Harper		Neiva	870.00	67,048.48
Check	6/21/2011	249	Daisy Harper		Neiva	40.00	67,088.48
Check	6/22/2011	252	Cameo Caregivers		Neiva	68.00	67,156.48
Check	6/23/2011	256	Tino		Neiva	1,170.00	68,326.48
Check	6/27/2011	257	Robert Cantu		Neiva	926.19	69,252.67
Check	6/27/2011	258	Katrina Harper		Neiva	360.00	69,612.67
Check	6/29/2011	259	Tino		Neiva	1,121.65	70,734.32
Check	7/1/2011	263	Robert Cantu		Neiva	930.00	71,664.32
Check	7/5/2011	265	Katrina Harper		Neiva	450.00	72,114.32
Check	7/5/2011	266	Robert Cantu		Neiva	60.00	72,174.32
Check	7/7/2011	269	Tino		Neiva	1,166.70	73,341.02
Check	7/8/2011	270	Robert Cantu		Neiva	915.00	74,256.02
Check	7/11/2011	271	Katrina Harper		Neiva	465.00	74,721.02
Check	7/15/2011	273	Robert Cantu		Neiva	720.00	75,441.02
Check	7/18/2011	274	Katrina Harper		Neiva	673.50	76,114.52
Check	7/21/2011	275	Tino		Neiva	1,172.66	77,287.18
Check	7/21/2011	276	Tino		Neiva	100.00	77,387.18
Check	7/22/2011	272	Tino		Neiva	1,300.06	78,687.24
Check	7/22/2011	278	Robert Cantu		Neiva	165.00	78,852.24

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	7/22/2011	279	Katrina Harper		Neiva	465.00	79,317.24
Check	7/25/2011	277	Daisy Harper		Neiva	60.00	79,377.24
Check	7/25/2011	281	Robert Cantu		Neiva	765.00	80,142.24
Check	7/28/2011	282	Tino		Neiva	705.00	80,847.24
Check	8/1/2011	283	Robert Cantu		Neiva	1,018.00	81,865.24
Check	8/1/2011	284	Katrina Harper		Neiva	1,062.47	82,927.71
Check	8/4/2011	288	Tino		Neiva	907.50	83,835.21
Check	8/8/2011	289	Robert Cantu		Neiva	930.00	84,765.21
Check	8/9/2011	290	Katrina Harper		Neiva	465.00	85,230.21
Check	8/11/2011	291	Tino		Neiva	1,125.00	86,355.21
Check	8/15/2011	301	Robert Cantu		Neiva	946.00	87,301.21
Check	8/15/2011	302	Katrina Harper		Neiva	450.00	87,751.21
Check	8/18/2011	303	Tino		Neiva	1,146.83	88,898.04
Check	8/19/2011	304	Robert Cantu		Neiva	172.50	89,070.54
Check	8/19/2011	306	Katrina Harper		Neiva	459.50	89,530.04
Check	8/22/2011	308	Robert Cantu		Neiva	735.00	90,265.04
Check	8/24/2011	309	Tino		Neiva	1,110.00	91,375.04
Check	8/29/2011	311	Robert Cantu		Neiva	1,004.00	92,379.04
Check	8/30/2011	312	Katrina Harper		Neiva	517.50	92,896.54
Check	9/1/2011	313	Tino		Neiva	1,162.50	94,059.04
Check	9/6/2011	314	Katrina Harper		Neiva	173.00	94,232.04
Check	9/6/2011	315	Robert Cantu		Neiva	750.00	94,982.04
Check	9/6/2011	316	Daisy Harper		Neiva	80.00	95,062.04
Check	9/6/2011	317	Katrina Harper		Neiva	440.00	95,502.04
Check	9/8/2011	318	Tino		Neiva	1,193.59	96,695.63
Check	9/12/2011	319	Robert Cantu		Neiva	750.00	97,445.63
Check	9/13/2011	328	Katrina Harper		Neiva	628.15	98,073.78
Check	9/15/2011	330	Tino		Neiva	1,034.67	99,108.45
Check	9/19/2011	332	Robert Cantu		Neiva	715.00	99,823.45
Check	9/20/2011	334	Katrina Harper		Neiva	576.00	100,399.45
Check	9/22/2011	335	Tino		Neiva	1,054.46	101,453.91
Check	9/26/2011	338	Robert Cantu		Neiva	784.86	102,238.77
Check	9/27/2011	339	Katrina Harper		Neiva	630.00	102,868.77
Check	9/29/2011	340	Tino		Neiva	810.29	103,679.06
Check	10/3/2011	341	Robert Cantu		Neiva	976.34	104,655.40
Check	10/4/2011	342	Katrina Harper		Neiva	576.57	105,231.97
Check	10/6/2011	344	Tino		Neiva	1,030.00	106,261.97
Check	10/7/2011	346	Robert Cantu		Neiva	165.00	106,426.97
Check	10/11/2011	348	Robert Cantu		Neiva	570.00	106,996.97
Check	10/11/2011	349	Katrina Harper		Neiva	581.66	107,578.63
Check	10/11/2011	350	Robert Cantu		Neiva	240.00	107,818.63
Check	10/14/2011	351	Robert Cantu		Neiva	515.00	108,333.63
Check	10/17/2011	352	Robert Cantu		Neiva	570.00	108,903.63
Check	10/18/2011	353	Katrina Harper		Neiva	985.00	109,888.63
Check	10/19/2011	357	Tino		Neiva	1,342.50	111,231.13
Check	10/21/2011	358	Katrina Harper		Neiva	165.00	111,396.13
Check	10/24/2011	363	Robert Cantu		Neiva	860.00	112,256.13
Check	10/25/2011	364	Katrina Harper		Neiva	370.00	112,626.13
Check	10/28/2011	365	Tino		Neiva	1,187.19	113,813.32
Check	10/31/2011	CHK	Unknown payee		Neiva	793.00	114,606.32
Check	10/31/2011	366	Katrina Harper		Neiva	165.00	114,771.32
Check	11/1/2011	375	Katrina Harper		Neiva	540.00	115,311.32
Check	11/4/2011	376	Tino		Neiva	1,235.29	116,546.61
Check	11/7/2011	377	Robert Cantu		Neiva	885.00	117,431.61
Check	11/8/2011	401	Katrina Harper		Neiva	360.00	117,791.61
Check	11/14/2011	431	Latoya Harper		Neiva	90.00	117,881.61
Check	11/14/2011	432	Katrina Harper		Neiva	810.00	118,691.61
Check	11/14/2011	433	Robert Cantu		Neiva	541.00	119,232.61
Total In Home Care						119,232.61	119,232.61
Medical Supplies							
Check	1/3/2011	6847	Medical Aids		Survivor	32.48	32.48
Check	1/19/2011	104	Duke Medical Equipm...		Neiva	2.54	35.02
Check	4/22/2011	184	Duke Medical Equipm...		Neiva	17.75	52.77
Check	7/7/2011	7023	Duke Medical Equipm...		Survivor	7.62	60.39
Check	7/7/2011	251	Duke Medical Equipm...	Supplies	Neiva	5.08	65.47
Total Medical Supplies						65.47	65.47
Medical Expenses - Other							
Check	1/10/2011	EFT	Walgreens	Food & Dining Groceries POS DEB 1943 01/03/11 00027165	Neiva	21.62	21.62
Check	1/18/2011	103	Memorial City Hermann		Neiva	220.00	241.62
Check	1/19/2011	105	Memorial Clinical Ass...	Doctor	Neiva	8.02	249.64
Check	1/19/2011	108	Radiology West	Doctor	Neiva	1.23	250.87
Check	1/20/2011	106	Memoria City Surgical...	Doctor	Neiva	39.74	290.61
Check	2/2/2011	118	Memorial Pathology C...	Doctor	Neiva	7.10	297.71
Check	2/7/2011	117	Rosewood Family Ph...	Doctor	Neiva	65.00	362.71
Check	2/9/2011	127	Schleicher Dental	Dentist	Neiva	105.00	467.71
Check	2/17/2011	134	Medical Chest Associ...	Doctor	Neiva	15.01	482.72
Check	3/8/2011	151	Memorial City Hermann		Neiva	181.58	664.30
Check	3/10/2011	150	Radiology West		Neiva	5.37	669.67
Check	3/14/2011	153	ACS Primary Care		Neiva	7.56	677.23
Check	4/18/2011	188	ACS Primary Care		Neiva	7.23	684.46
Check	4/19/2011	183	Medical Chest Associ...	Doctor	Neiva	19.52	703.98
Check	4/22/2011	193	Cardiologist Assoc of ...		Neiva	28.60	732.58
Check	6/23/2011	254	Memorial Clinical Ass...	Doctor	Neiva	5.76	738.34
Check	7/1/2011	260	Schleicher Dental	Dental	Neiva	143.00	881.34
Check	7/6/2011	7024	Medical Chest Associ...	Medical: Doctor	Survivor	4.12	885.46
Check	8/5/2011	285	Dr. Achari	Doctor	Neiva	24.98	910.44

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	8/15/2011	298	memorial Hermann M...		Nelva	13.47	923.91
Check	8/16/2011	299	ACS Primary Care		Nelva	7.23	931.14
Check	8/19/2011	297	Azmat Khan MDPA	Doctor	Nelva	10.13	941.27
Check	8/29/2011	310	Legends Pharmacy		Nelva	42.00	983.27
Check	9/13/2011	323	Dentex	Doctor	Nelva	155.40	1,138.67
Check	9/13/2011	324	Memorial City Hermann		Nelva	25.00	1,163.67
Check	9/16/2011	321	ACS Primary Care	Doctor	Nelva	6.87	1,170.54
Check	9/22/2011	327	Memorial City Hermann		Nelva	59.77	1,230.31
Check	9/28/2011	320	Dr. Khawaja	Doctor	Nelva	28.04	1,258.35
Check	10/18/2011	355	OC Pharmacy	Medicine	Nelva	10.00	1,268.35
Check	10/19/2011	354	Oncology Consultants	Doctor	Nelva	22.48	1,290.83
Check	11/7/2011	EFT	Mht Nutrit Svcs H		Nelva	8.12	1,298.95
Check	11/10/2011	371	Dr. Achari	Doctor	Nelva	29.30	1,328.25
Check	11/10/2011	372	Northwoods Urology	Doctor	Nelva	84.97	1,413.22
Check	11/14/2011	374	Medical Chest Associ...	Doctor	Nelva	34.42	1,447.64
Check	12/6/2011	7041	Justin Alexander	for kt - reimburse Medical	Survivor	40.00	1,487.64
Check	12/15/2011	103	Memorial City Hermann	Doctor	Survivor	41.72	1,529.36
Check	12/22/2011	107	Kelsey-Seybold Clinic	Doctor	Survivor	13.92	1,543.28
Check	12/22/2011	108	Memorial City Hermann	Doctor	Survivor	226.40	1,769.68
Check	12/22/2011	109	ACS Primary Care	Doctor	Survivor	6.87	1,776.55
Check	1/23/2012	113	Northwoods Urology	Doctor	Survivor	740.77	2,517.32
Check	2/24/2012	112	Dr. Annie Uralil	Doctor	Survivor	44.06	2,561.38
Check	4/16/2012	120	Houston Progressive ...	Doctor	Survivor	2.20	2,563.58
Check	4/16/2012	121	Medical Chest Associ...	Doctor	Survivor	5.40	2,568.98
Total Medical Expenses - Other						2,568.98	2,568.98
Total Medical Expenses						121,867.06	121,867.06
Miscellaneous Expenses							
Check	1/18/2011	107	Hull Co-op	Misc :	Nelva	238.50	238.50
Check	11/14/2011	WDRL	Withdrawal	NO INFORMATION GIVEN FOR THIS TRANSACTION AND BA...	Nelva	6,500.00	6,738.50
Check	11/14/2011	EFT	Houston Metro Ca	Misc	Nelva	15.22	6,753.72
Total Miscellaneous Expenses						6,753.72	6,753.72
Office Supplies							
Check	1/13/2011	EFT	Bank of America	Check Order	Survivor	15.00	15.00
Check	12/31/2012	141	Office Depot	Printer Ink	Survivor	48.70	63.70
Total Office Supplies						63.70	63.70
Payments to Credit Cards							
Bank of America Credit Cards							
Check	2/1/2011	EFT	Bank of America Cre...		Nelva	43.29	43.29
Check	3/1/2011	EFT	Bank of America Cre...	Household	Survivor	282.47	325.76
Check	3/18/2011	EFT	Bank of America Cre...		Nelva	84.82	410.58
Check	4/1/2011	EFT	Bank of America Cre...	Payment	Survivor	38.00	448.58
Check	5/2/2011	EFT	Bank of America Cre...		Survivor	2,967.61	3,416.19
Check	6/1/2011	EFT	Bank of America Cre...	Credit card	Survivor	8,355.65	9,771.84
Check	9/1/2011	EFT	Bank of America Cre...		Survivor	3,256.32	13,028.16
Check	11/7/2011	EFT	Bank of America Cre...		Survivor	323.88	13,352.04
Check	12/2/2011	EFT	Bank of America Cre...		Survivor	359.79	13,711.83
Check	2/2/2012	EFT	Bank of America Cre...		Survivor	269.84	13,981.67
Check	3/2/2012	EFT	Bank of America Cre...		Survivor	61.32	14,042.99
Total Bank of America Credit Cards						14,042.99	14,042.99
Bluebonnet Credit Union Cred Cd							
Check	1/18/2011	EFT	Bank of America Cre...	Payment	Nelva	725.00	725.00
General Journal	1/19/2011	EJ20120455		Return of Posted Check / Item (R - BOA Cr Cd payment	Nelva	-725.00	0.00
Check	1/21/2011	EFT	Bank of America Cre...	Payment	Nelva	725.00	725.00
Check	3/14/2011	152	Bluebonnet Credit Uni...	Credit card	Nelva	3,248.57	3,973.57
Check	3/15/2011	312	Cardmember Serv	Credit Card	Nelva	111.00	4,084.57
Check	5/26/2011	225	Bluebonnet Credit Uni...	Credit card	Nelva	1,852.24	5,936.81
Check	5/27/2011	EFT	Bluebonnet Credit Uni...	w/medical	Survivor	1,864.49	7,801.30
Check	6/21/2011	9000	Cardmember Serv	payment	Nelva	195.00	7,996.30
Check	7/18/2011	EFT	Bluebonnet Credit Uni...	w medical	Survivor	175.47	8,171.77
Check	8/16/2011	EFT	Bluebonnet Credit Uni...	with medical	Survivor	1,172.08	9,343.85
Check	9/19/2011	EFT	Bluebonnet Credit Uni...	w/medical	Survivor	790.04	10,133.89
Check	10/18/2011	EFT	Bluebonnet Credit Uni...	w/medical	Survivor	687.84	10,821.73
Check	11/29/2011	EFT	Bluebonnet Credit Uni...	includes medical	Survivor	1,165.23	11,986.96
Total Bluebonnet Credit Union Cred Cd						11,986.96	11,986.96
Total Payments to Credit Cards						26,029.95	26,029.95
Personal Care							
Check	2/25/2011	139	Silvana	Hair	Nelva	52.00	52.00
Check	5/27/2011	230	Silvana	hair	Nelva	25.00	77.00
Check	6/13/2011	EFT	Target	Shopping-Clothing	Nelva	53.12	130.12
Check	6/13/2011	EFT	J C Penney	Shopping - Clothing	Nelva	125.93	256.05
Check	6/20/2011	EFT	J C Penney	Shopping - Clothing	Nelva	61.70	317.75
Check	6/20/2011	EFT	J C Penney	Shopping - Clothing	Nelva	251.94	569.69
General Journal	6/21/2011	EJ20120468		ATM - Target - Shopping - Clothing	Nelva	-53.12	516.57
Check	6/21/2011	EFT	Target	Shopping - Clothing	Nelva	30.84	547.41
General Journal	7/11/2011	EJ20120470		ATM JCPenney Shopping - Clothing	Nelva	-140.42	406.99
Check	7/11/2011	EFT	Stein Mart	Shopping - Clothing	Nelva	102.77	509.76
Check	7/11/2011	EFT	J C Penney	Shopping - Clothing	Nelva	80.05	589.81
Check	7/18/2011	EFT	J C Penney	Shopping - Clothing	Nelva	208.33	798.14
Total Personal Care						798.14	798.14
Pet Care							

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Pet Food and Supplies							
Check	2/26/2011	EFT	Petsmart	Food & Dining:Groceries	Nelva	36.79	36.79
Check	7/29/2011	EFT	Petsmart		Nelva	32.89	69.68
Total Pet Food and Supplies						69.68	69.68
Veterinary Expenses							
Check	5/23/2011	EFT	Houston Veterinary	Carole covered healthcare worked pay when this acct was low - ...	Nelva	1,019.72	1,019.72
Check	8/14/2011	EFT	Houston Veterinary	Carole had to cover worker pay - Reimbursement	Nelva	216.80	1,236.52
General Journal	6/15/2011	EJ20120467		ATM - Checkcard 0612 Houston Veterinary	Nelva	-433.60	802.92
Check	9/19/2011	EFT	Equine Sports Med	Carole covered worker pay - Reimbursement	Nelva	812.50	1,615.42
Check	10/3/2011	EFT	Greenway Animal C	Carole covered worker pay - Reimbursement	Nelva	360.82	1,976.24
Total Veterinary Expenses						1,976.24	1,976.24
Total Pet Care						2,045.92	2,045.92
Postage							
Check	3/21/2012	118	Postmaster	Estate tax info to Rich	Survivor	14.80	14.80
Check	4/16/2012	126	Postmaster	Mailing Cert Life Ins Checks	Survivor	12.60	27.40
Check	6/27/2012	134	Postmaster	Trust docs	Survivor	29.19	56.59
Check	7/18/2012	136	Postmaster	Papers to lawyer	Survivor	15.45	72.04
Check	4/4/2013	144	Postmaster	contract to g. vie	Survivor	6.11	78.15
Total Postage						78.15	78.15
Professional Fees							
Check	6/9/2011	7017	Kroese & Kroese	Mom - Tax preparations	Survivor	581.93	581.93
Check	6/9/2011	7018	Kroese & Kroese	Decedents trust Tax preparation	Survivor	1,123.87	1,685.80
Check	9/5/2011	7029	Kroese & Kroese	farm lease Tax preparation	Survivor	203.06	1,888.86
Check	10/20/2011	7031	Kroese & Kroese	Tax preparation	Survivor	700.00	2,588.86
Check	3/11/2012	116	Kroese & Kroese	Farm appraisal/mgmt	Survivor	2,175.00	4,763.86
Check	4/13/2012	119	Kroese & Kroese	Tax preparation	Survivor	1,050.00	5,813.86
Check	5/16/2012	102	Kroese & Kroese	Accounting services	Elmer	750.00	6,563.86
Check	5/16/2012	103	Kroese & Kroese	Accounting services - farm contract and trust advice	Elmer	1,000.00	7,563.86
Total Professional Fees						7,563.86	7,563.86
Repairs and Maintenance							
Check	8/13/2011	EFT	Sears	Home appliance repair	Nelva	134.93	134.93
Check	8/16/2011	295	P&M Air Conditioning	Home repair	Nelva	148.38	283.31
Check	2/29/2012	115	Durapier	Leveling house - home repair	Survivor	500.00	783.31
Total Repairs and Maintenance						783.31	783.31
Supplies							
Check	1/31/2011	EFT	Lowe's	Garden	Nelva	0.95	0.95
Check	2/22/2011	EFT	Lowe's	Garden	Nelva	22.99	23.94
Check	6/27/2011	EFT	Lowe's	Garden	Nelva	5.89	29.83
Total Supplies						29.83	29.83
Taxes							
Taxes - Federal							
Check	1/25/2011	7001	United States Treasury	2010 Estimated Taxes	Survivor	2,840.00	2,840.00
Check	4/15/2011	7010	United States Treasury	Decedents trust 2010 tax	Survivor	7,095.00	9,935.00
Check	4/15/2011	7011	United States Treasury	Decedents trust 2011 tax qtr est	Survivor	1,780.00	11,715.00
Check	4/15/2011	7012	United States Treasury	Surv Trust 2011 tax qtr est	Survivor	3,095.00	14,810.00
Check	4/15/2011	7013	United States Treasury	Surv Trust 2010 tax	Survivor	3,620.00	18,430.00
Check	6/9/2011	7020	United States Treasury	Surv Trust 2010 tax qtrly Tax:Fed	Survivor	3,620.00	22,050.00
Check	6/9/2011	7022	United States Treasury	Dec Trust 2010 tax qtrly Tax:Fed	Survivor	1,780.00	23,830.00
Check	9/5/2011	7027	United States Treasury	Sept mom's trust pmt	Survivor	2,100.00	25,930.00
Check	9/5/2011	7028	United States Treasury	Sept dad's trust pmt	Survivor	1,780.00	27,710.00
Check	12/15/2011	104	United States Treasury	Tax:Fed	Survivor	1,780.00	29,490.00
Check	4/4/2013	146	United States Treasury	Tax:Fed	Survivor	20.00	29,510.00
Check	4/14/2013	104	United States Treasury		Elmer	23,906.00	53,416.00
Total Taxes - Federal						53,416.00	53,416.00
Taxes - Property							
Check	1/19/2011	7004	Tax Assessor-Collector	098-560-000-0031	Survivor	1,112.87	1,112.87
Check	3/2/2011	145	Wilchester West Fund	Tax:zzzzzz	Nelva	365.23	1,478.10
Check	4/8/2011	EFT	County Treasurer	DES: TAX ID: 971 farm	Survivor	1,367.40	2,865.50
Check	6/9/2011	7019	Wilchester West Fund	Tax:ZZZZZ 13630 Pinerock	Survivor	327.00	3,192.50
Check	10/4/2011	EFT	County Treasurer	DES:Tax ID:119 farm	Survivor	1,598.40	4,790.90
Check	11/23/2011	EFT	Spring Branch ISD	DES: checkpaymt Tax:ZZZZZZZZ	Survivor	227.24	5,018.14
Check	12/15/2011	102	Wilchester West Fund	Tax:zzzzzzzz 13630 Pinerock	Survivor	359.00	5,377.14
Check	1/19/2012	114	HC Property Tax		Survivor	1,285.05	6,662.19
Check	10/15/2012	EFT	County Treasurer	DES: Tax ID: 166	Elmer	1,586.40	8,248.59
Check	3/18/2013	EFT	County Treasurer	DES: Tax ID: 178 - Farm Tax	Elmer	1,563.40	9,811.99
Total Taxes - Property						9,811.99	9,811.99
Taxes -State							
Check	2/1/2011	7002	State of Iowa Treasurer		Survivor	330.00	330.00
Check	6/9/2011	7021	Treasurer State of Iowa		Survivor	47.00	377.00
Check	9/5/2011	7026	Treasurer State of Iowa	mom	Survivor	230.00	607.00
General Journal	4/23/2012	EJ20120415		Deposit Iowa Tax Refund	Survivor	-690.00	-83.00
Check	9/10/2012	138	Treasurer State of Iowa	Amended taxes	Survivor	79.00	-4.00
Check	4/14/2013	105	Treasurer State of Iowa		Elmer	4,797.00	4,793.00
Total Taxes -State						4,793.00	4,793.00
Total Taxes						68,020.99	68,020.99
Telephone Expense							
Check	1/24/2011	EFT	Verizon		Nelva	106.42	106.42

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	1/27/2011	EFT	AT&T		Survivor	68.68	175.10
Check	2/24/2011	EFT	Verizon		Nelva	172.35	347.45
Check	2/28/2011	7008	AT&T	(SBC-AR, KS,MO,OK,TX) B	Survivor	76.39	423.84
Check	3/15/2011	EFT	AT&T	(SBC-AR,KS,MO,OK,TX) B	Survivor	70.42	494.26
Check	3/28/2011	EFT	Verizon		Nelva	138.92	633.18
Check	4/21/2011	EFT	Verizon		Nelva	72.88	706.06
Check	4/26/2011	EFT	AT&T	(SBC-AR,KS,MO,OK,TS) B	Survivor	176.85	882.91
Check	5/9/2011	EFT	AT&T		Survivor	177.21	1,060.12
Check	5/27/2011	EFT	AT&T		Survivor	95.73	1,155.85
Check	6/6/2011	EFT	Verizon		Nelva	225.00	1,380.85
Check	6/9/2011	EFT	AT&T	DES:Payment ID:787780565AUS	Survivor	154.09	1,534.94
Check	6/28/2011	EFT	AT&T	Bill (SBC-AR, KS, MO, OK, TX) B	Survivor	86.12	1,621.06
Check	7/5/2011	EFT	Verizon		Nelva	282.03	1,903.09
Check	7/11/2011	EFT	AT&T	DES:Payment ID:787780565AUS	Survivor	224.42	2,127.51
Check	7/27/2011	EFT	AT&T	Bill(SBC-AR, KS, MO, OK, TX) B	Survivor	82.16	2,209.67
Check	8/2/2011	EFT	Verizon		Nelva	245.03	2,454.70
Check	8/10/2011	EFT	AT&T	DES:Payment ID: 787780565AUS	Survivor	170.89	2,625.59
Check	8/25/2011	EFT	Verizon		Nelva	242.00	2,867.59
Check	8/26/2011	EFT	AT&T	Bill (SBC-AR, KS, MO, OK, TX) bill payment	Survivor	84.47	2,952.06
Check	9/12/2011	EFT	AT&T	DES:Payment ID:787780565AUS	Survivor	168.71	3,120.77
Check	9/23/2011	EFT	Verizon		Nelva	137.66	3,258.43
Check	9/26/2011	EFT	AT&T	Bill (SBC-AR, KS, MO, OK, TX) B	Survivor	84.47	3,342.90
Check	10/11/2011	EFT	AT&T	DES:Payment ID:787780565AUS	Survivor	184.35	3,527.25
Check	11/1/2011	EFT	Verizon		Nelva	189.54	3,716.79
Check	11/8/2011	EFT	AT&T	Bill (SBC-AR, KS, MO, OK, TX) B	Survivor	84.44	3,801.23
Check	11/10/2011	EFT	AT&T	DES:Payment ID: 787780565AUS	Survivor	168.24	3,969.47
Check	11/23/2011	EFT	Verizon		Nelva	192.13	4,161.60
Check	12/5/2011	EFT	AT&T	Bill (SBC-AR, KS, MO, OK,TX) B	Survivor	90.82	4,252.42
Check	12/28/2011	EFT	AT&T	Bill(SBC-AR,KS,MO,OK,TX) B	Survivor	108.59	4,361.01
Check	1/31/2012	EFT	AT&T	Bill (SBC-AR,KS,MO,OK,TX) B	Survivor	86.00	4,447.01
Check	2/14/2012	EFT	AT&T	Bill (SBC-AR,KS,MO,OK,TX)	Survivor	72.16	4,519.17
Total Telephone Expense						4,519.17	4,519.17
Utilities							
Cable TV							
Check	1/5/2011	EFT	Comcast		Survivor	64.04	64.04
Check	1/27/2011	EFT	Comcast		Survivor	59.77	123.81
Check	2/25/2011	EFT	Comcast		Survivor	67.65	191.46
Check	3/23/2011	EFT	Comcast		Survivor	63.71	255.17
Check	4/26/2011	EFT	Comcast		Survivor	63.71	318.88
Check	4/26/2011	EFT	Comcast		Survivor	63.71	382.59
Check	5/26/2011	EFT	Comcast		Survivor	11.52	394.11
Check	5/31/2011	EFT	Comcast		Survivor	11.52	405.63
Check	6/28/2011	EFT	Comcast	Elmer H Brunsting	Survivor	52.20	457.83
Check	7/28/2011	EFT	Comcast	Elmer	Survivor	63.72	521.55
Check	8/29/2011	EFT	Comcast		Survivor	63.72	585.27
Check	9/28/2011	EFT	Comcast		Survivor	63.72	648.99
Check	10/28/2011	EFT	Comcast		Survivor	63.71	712.70
Check	11/29/2011	EFT	Comcast		Survivor	63.71	776.41
Total Cable TV						776.41	776.41
Electricity							
Check	1/21/2011	EFT	Stream Energy of TX		Survivor	134.05	134.05
Check	2/18/2011	EFT	Stream Energy of TX	Utilities: Gas & Electric	Survivor	106.89	240.94
Check	3/15/2011	EFT	Stream Energy of TX		Survivor	100.71	341.65
Check	4/18/2011	EFT	Stream Energy of TX		Survivor	93.99	435.64
Check	5/19/2011	EFT	Stream Energy of TX		Survivor	174.61	610.25
Check	6/17/2011	EFT	Stream Energy of TX	Bill payment	Survivor	217.04	827.29
Check	7/18/2011	EFT	Stream Energy of TX	Bill payment	Survivor	166.12	993.41
Check	8/17/2011	EFT	Stream Energy of TX	bill payment	Survivor	308.10	1,301.51
Check	9/16/2011	EFT	Stream Energy of TX	bill payment	Survivor	344.55	1,646.06
Check	10/17/2011	EFT	Stream Energy of TX		Survivor	217.43	1,863.49
Check	11/15/2011	EFT	Stream Energy of TX	payment	Survivor	160.68	2,024.17
Check	12/28/2011	eft	Stream Energy of TX	PAYMENT	Survivor	81.95	2,106.12
Check	1/20/2012	EFT	Stream Energy of TX		Survivor	59.96	2,166.08
Check	2/17/2012	EFT	Stream Energy of TX		Survivor	19.10	2,185.18
Check	3/26/2012	EFT	Stream Energy of TX		Survivor	39.19	2,224.37
Check	4/25/2012	EFT	Stream Energy of TX	Payment	Survivor	25.00	2,249.37
Check	6/7/2012	133	Stream Energy of TX		Survivor	10.53	2,259.90
Total Electricity						2,259.90	2,259.90
Gas							
Check	1/19/2011	7005	Entex		Survivor	130.42	130.42
Check	4/18/2011	EFT	Entex	PPD	Nelva	323.62	454.04
Check	6/22/2011	EFT	Entex	PPD	Nelva	73.47	527.51
Check	8/15/2011	296	Entex		Nelva	52.48	579.99
Check	9/14/2011	325	Entex		Nelva	42.59	622.58
Check	11/23/2011	EFT	Entex	PPD	Survivor	65.66	688.24
Check	12/22/2011	106	Centerpoint Energy	PPD	Survivor	54.62	742.86
Check	3/11/2012	117	Centerpoint Energy	PPD	Survivor	158.09	900.95
Check	6/7/2012	132	Entex	PPD	Survivor	41.71	942.66
Total Gas						942.66	942.66
Water							
Check	12/23/2010	EFT	City of Houston Water		Nelva	52.74	52.74
Check	1/21/2011	EFT	City of Houston Water		Survivor	80.94	133.68
Check	3/1/2011	EFT	City of Houston Water	Water Bill	Survivor	52.74	186.42
Check	4/4/2011	EFT	City of Houston Water		Survivor	90.34	276.76

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Brunsting Family Living Trust
Detail of Accounts
12/21/2010-05/31/2013

Type	Date	Num	Name	Memo	Class	Amount	Balance
Check	5/11/2011	eft	City of Houston Water	WATER BILL	Survivor	99.74	376.50
Check	6/9/2011	EFT	City of Houston Water	DES: Water bill I	Survivor	130.35	506.85
Check	6/22/2011	7710	Electchk	Bcf - 14411 We 06/ Westh, Houston, TX #000032384	Survivor	314.57	821.42
Check	7/11/2011	EFT	City of Houston Water	DES:Water bill I	Survivor	282.51	1,103.93
Check	8/8/2011	EFT	City of Houston Water	DES: water bill I	Survivor	277.78	1,381.71
Check	9/8/2011	EFT	City of Houston Water	DES:water bill I	Survivor	265.10	1,646.81
Check	10/12/2011	EFT	City of Houston Water	DES:water bill I	Survivor	227.06	1,873.87
Check	11/10/2011	EFT	City of Houston Water	DES: water bill I	Survivor	201.70	2,075.57
Check	12/9/2011	EFT	City of Houston Water	DES:Water bill I	Survivor	252.42	2,327.99
Check	1/9/2012	EFT	City of Houston Water	DES:Water bill I	Survivor	115.49	2,443.48
Check	2/13/2012	EFT	City of Houston Water	DES:Water bill I	Survivor	47.13	2,490.61
Check	3/19/2012	EFT	City of Houston Water	DES:Water bill I	Survivor	20.42	2,511.03
Check	4/12/2012	EFT	City of Houston Water	DES:Water bill I	Survivor	26.19	2,537.22
Total Water						2,537.22	2,537.22
Total Utilities						6,516.19	6,516.19
Total Expense						418,844.23	418,844.23
Net Ordinary Income						411,325.12	411,325.12
Other Income/Expense							
Other Expense							
FMV of Stocks Transferred Out							
General Journal	5/11/2011	EJ20110522		Distribute 1,120 Sh Exxon Stock to Amy Brunsting	Survivor	90,854.40	90,854.40
General Journal	6/15/2011	EJ20110621		Distribute 1,325 Sh Exxon to Carole Brunsting	Elmer	110,597.75	201,452.15
General Journal	6/15/2011	EJ20110621		Distribute 160 Sh Exxon to Candy Curtis	Survivor	13,355.20	214,807.35
General Journal	6/15/2011	EJ20110621		Distribute 160 Sh Exxon to Anita Brunsting	Survivor	13,355.20	228,162.55
General Journal	6/15/2011	EJ20110621		Distribute 135 Sh Chevron to Ann Brunsting	Nelva	14,162.85	242,325.40
General Journal	6/15/2011	EJ20110621		Distribute 135 Sh Chevron to Anita Brunsting	Nelva	14,162.85	256,488.25
General Journal	6/15/2011	EJ20110621		Distribute 135 Sh Chevron to Jack Brunsting	Nelva	14,162.85	270,651.10
General Journal	6/15/2011	EJ20110621		Distribute 135 Sh Chevron to Katie Riley	Nelva	14,162.85	284,813.95
General Journal	6/15/2011	EJ20110621		Distribute 135 Sh Chevron to Luke Riley	Nelva	14,162.85	298,976.80
Total FMV of Stocks Transferred Out						298,976.80	298,976.80
Total Other Expense						298,976.80	298,976.80
Net Other Income						-298,976.80	-298,976.80
Net Income						112,348.32	112,348.32

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EXHIBIT 3

Curtis V Brunsting

Stock Distribution Analysis

Exhibit 3

Approximate Date	Exxon/Mobil Shares	Exxon/Mobil Value	Chevron Corporation Shares	Chevron Corporation Value	Totals Shares	Totals Value
Amy Brunsting						
5/11/2011	1,120.00000	90,854.40			1,120.00000	90,854.40
Carole Brunsting						
6/15/2011	1,325.00000	110,597.75			1,325.00000	110,597.75
Candy Curtis						
6/15/2011	160.00000	13,355.20			160.00000	13,355.20
Ann Brunsting						
6/15/2011			135.00000	14,162.85	135.00000	14,162.85
Jack Brunsting						
6/15/2011			135.00000	14,162.85	135.00000	14,162.85
Katie Riley						
6/15/2011			135.00000	14,162.85	135.00000	14,162.85
Luke Riley						
6/15/2011			135.00000	14,162.85	135.00000	14,162.85
Anita Brunsting						
6/15/2011	160.00000	13,355.20	135.00000	14,162.85	295.00000	27,518.05
Totals	2,765.00000	228,162.55	675.00000	70,814.25	3,440.00000	298,976.80
Recap by Date						
5/11/2011	1,120.00000	90,854.40			1,120.00000	90,854.40
6/15/2011	1,325.00000	110,597.75			1,325.00000	110,597.75
6/15/2011	320.00000	26,710.40	675.00000	70,814.25	995.00000	97,524.65
	2,765.00000	228,162.55	675.00000	70,814.25	3,440.00000	298,976.80

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Exhibit C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

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It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

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Exhibit 17

PLAINTIFFS RESPONSE TO THE REPORT OF MASTER AND APPLICATIONS FOR ORDERS August 13, 2013 demanding defendants account for EE bonds

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§ § §	
v	§ §	CIVIL ACTION NO. 4:12-cv-00592 Jury
ANITA KAY BRUNSTING, et al. Defendants.	§ §	

PLAINTIFF'S RESPONSE TO THE REPORT OF MASTER AND APPLICATIONS FOR ORDERS

1. Statement of the Case

1.1 Plaintiff and Defendants are siblings. Their parents, Elmer and Nelva Brunsting, created a living trust for their benefit and for the benefit of their five children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children: Candace, Carole, Carl, Amy, and Anita. The trust was also structured to preserve the Brunsting legacy for Elmer and Nelva's grandchildren.

1.2 Plaintiff Curtis' father died April 1, 2009 and her mother died November 11, 2011.

1.3 On February 27, 2012, Plaintiff filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of

emotional distress, alleging that the Defendants, acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments, and refused to account for trust assets or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in this process.

1.4 On May 9, 2013, the Court ordered the appointment of William G. West as Master to perform an accounting. The Report of Master[1], dated July 31, 2013, was submitted to the Court and the Court set this matter for hearing on September 3, 2013, with a deadline for filing objections to the report and the accountant's invoice on or before August 27, 2013.

[1] Case 4:12-cv-00592 Document 62 Filed in TXSD on 08/08/13

2. The Report of Master

2.1 The Report of Master ("Report") corroborates Plaintiff's claims that Defendants have refused to account for trust assets, to report on any other acts of administration, concealed information that they have a fiduciary duty to disclose, and that Defendants failed to keep accurate books and records, and therefore are unwilling or unable to account.

2.2 The Report indicates to Plaintiff that Defendants have failed to keep any books whatsoever, and cannot or will not produce all of the records necessary for a full, true and complete accounting of trust assets, income, and expenditures. Many of these records they have simply claimed as "missing", after numerous requests from the Master to provide the information.

2.3 Therefore, on the basis of the absence of records, as shown by the Report, Plaintiff objects to the accounting provided by Defendants as incomplete, and hereby challenges all transactions.

3. General Challenge to Validity of Transactions

3.1 Defendants' inability or unwillingness to disclose supporting evidence that would give the accounting veracity, continues to inform this Plaintiff's belief that Defendants have something to hide.

3.2 Plaintiff hereby generally challenges all transactions, including but not limited to those claimed to be gifts, reimbursements, trustee compensation, and legal expenses. Plaintiff specifically challenges all transactions from which Defendants personally benefited.

4. Known Assets of the Trust Unaccounted For

4.1 Plaintiff has personal knowledge that U.S. Treasury Series EE/E Savings Bonds existed after the death of Nelva Brunsting and have not appeared on any schedule of assets to date.

5. Application for Order to Obtain Records Regarding U.S. Treasury Bonds

5.1 Plaintiff moves this court for an order for procurement of the records on file with the U.S. Treasury, pursuant to the attached proposed order.

6. Application for Order to Obtain Additional Records and Records Noted in the Master's Report to be "Missing"

6.1 The extent to which the trust assets have been mismanaged cannot be determined without complete transparency and documentation. Plaintiff therefore moves this court for an order for procurement of additional and "missing" records pursuant to the attached proposed order.

7. Challenge to Validity of Securities Transactions

7.1 The Report reflects stock distributions to the Defendants and their children. Plaintiff specifically challenges all stock transactions from which Defendants personally benefited. Defendants did not notice Plaintiff, nor obtain her consent, for distributions that benefited the Defendants substantially more than, and to the exclusion of, other co-beneficiaries.

8. Other Relief Requested

8.1 Plaintiff requests that Defendants be ordered to bear the costs associated with the execution of these orders.

8.2 Plaintiff further requests that the Preliminary Injunction remain in full force and effect.

8.3 Plaintiff further respectfully requests that this Court grant any other available relief that it finds reasonable or necessary under the totality of the circumstances.

Respectfully submitted, Monday, August 26, 2013

/s/_____

Candace Louise Curtis
1215 Ulfinian Way
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Exhibit 18

Transcript: Hearing on Report of Special Master September 3, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	.	Civil Action
	.	No. H-12-592
	.	
	.	
	.	
VS.	.	
	.	
	.	
ANITA KAY BRUNSTING, ET	.	SEPTEMBER 3, 2013
AL.	.	HOUSTON, TEXAS
	.	1:38 P.M.
	.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR PLAINTIFF:	MS. CANDACE LOUISE Pro Se 1215 Ulfinian Way Martinez, California 94553
FOR DEFENDANTS:	MR. GEORGE WILLIAM VIE, III MS. MAUREEN McCUTCHEN Mills Shirley LLP 1021 Main Street Suite 1950 Houston, Texas 77002

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

APPEARANCES (Continued):

FOR SPECIAL MASTER: MR. TIMOTHY AARON MILLION
Munsch Hardt, et al.
700 Louisiana Street
Suite 4600
Houston, Texas 77002

OFFICIAL COURT REPORTER: MS. STEPHANIE KAY CARLISLE
U.S. District Court
515 Rusk, Suite 8016
Houston, Texas 77002
713.250.5157

ALSO PRESENT: Mr. William Arthur Potter

* * *

PROCEEDINGS

(September 3, 2013)

THE COURT: This is Cause No. 2012-592, Candace Louise Curtis versus Anita Kay Brunsting and others. And Amy Ruth Brunsting. And I believe the law firm has been sued as well. I'm not sure if they have been served or not. In any event, let's see. Let's get an announcement here.

For the plaintiff, pro se, is that you, Ms. Curtis?

01:38:32PM MS. CURTIS: Yes, Your Honor.

THE COURT: And for the defendants?

MR. VIE: George Vie and Maureen Kuzik McCutchen for the defendants, Your Honor.

THE COURT: I'm sorry, say that again.

MR. VIE: George Vie and Ms. McCutchen for the defendants, Your Honor.

THE COURT: All right. And I have the special master here as well.

MR. WEST: Good afternoon, Your Honor. William

01:38:54PM West, special master.

THE COURT: And you have counsel with you?

MR. MILLION: Good afternoon, Your Honor. Timothy Million.

THE COURT: All right. And another gentleman?

01:39:06PM MR. WEST: Your Honor, this is my associate, William

A. Potter, P-O-T-T-E-R.

THE COURT: Okay. Very good. Let's see. We have the special master here as well, I gather, as the defendants, two of the defendants, the two sisters.

01:39:24PM I'm not sure. Are both of them serving as administrators or trustees of the estate?

MR. VIE: They are both co-trustees. Only Anita Brunsting is here today.

THE COURT: Any reason why Amy Ruth is not present?

01:39:44PM MR. VIE: Just because of employment obligations, sir.

THE COURT: Okay. I believe that's everyone that's participating.

We have this suit that was filed by Ms. Curtis 01:40:04PM back in 2012, in fact. I believe, Ms. Curtis, somewhere around February of 2012. That was pending for a period of time, and it was initially brought as a kind of truth in limine accounting. She mixed a lot of stuff together there.

And, of course, the one aspect of the case that 01:40:26PM this Court -- I said one aspect. One of the aspects of this case that the Court saw was first that there was diversity of citizenship, that she was a California resident, and the sisters were Texas residents.

And, secondly, that she was making allegations 01:40:44PM about an estate that appeared to be substantial sums of money,

or property, or both, were located, and that she was an heir, or at least felt that she was one of the heirs to the estate, and that she felt, I believe, at that time, that her sisters, who were co-trustees, were not properly managing the estate. I think that's, generally speaking, how this lawsuit developed.

01:41:09PM

So, in the process of conducting a couple of hearings, or at least -- I say hearings, opportunities for communication and dialogue, the Court set this matter for a hearing, and we had a hearing several months ago. Let's see if I can track that down. A telephone conference in July. I think it may have been the -- perhaps were the last communication we had. Proceeding here in the courtroom, for sure.

01:41:26PM

And the Court determined that a report, an accounting of income, receipts, and expenses, and disbursements would be appropriate, setting a time frame of December 21, 2010, through May 31st of 2013, and that that report should be filed. I would then conduct a hearing to determine not so much whether or not the accounting -- the report should be received, but to permit the master -- special master to answer questions from either side regarding the procedure and his findings, and then, also, for approval of his request for -- for pay.

01:42:08PM

01:42:31PM

And there, I believe, have been, since that

01:42:56PM

time, motions filed by the defense for, I believe, a renewal of a lease on the Iowa property. Objections to that and then other motions have been filed. So we will see how much, if not all of this, we can cover.

01:43:25PM So, Ms. Curtis, will you be -- besides the special master, is there anyone else in the courtroom you are going to need to call and have testify or ask questions of?

MS. CURTIS: No, Your Honor.

THE COURT: Okay. Sir, if you come forward, I will

01:43:41PM swear you in, and then you can take a seat over on my left.

Raise your right hand, please, sir.

(William West, witness, sworn.)

THE COURT: Please have a seat. And we can start with -- Ms. Curtis, we can start with you, if you have

01:44:07PM questions of the special master regarding -- you have a copy of his report, do you not?

MS. CURTIS: Yes, I do, Your Honor.

THE COURT: Okay. Why don't you move up closer to us there -- no, no, no. I mean, you can have a seat there, but I just wanted you to move up closer and bring the paperwork up closer.

All right. This is a formal proceeding, Ms. Curtis, so that when you are addressing the Court, you will need to stand and address the Court, and -- and I will be

01:44:44PM requiring that all of the questioning that is done as to any

witness should be done from the podium so it is easy for me to pay attention, for the lawyer and then the witness, and, of course, that same -- obviously, that same rule applies to counsel for the defense.

01:45:01PM If you would also bend that microphone down so that, when you are standing in that area and speaking to me, we will be able to hear you, and the court reporter can take your remarks.

All right. Are you ready -- you have a copy of

01:45:15PM the report, I believe you said.

MS. CURTIS: Yes, Your Honor.

THE COURT: Do you have some questions you want to ask of the witness? If so, you may do so at this time.

MS. CURTIS: No, Your Honor. I have no questions.

01:45:24PM THE COURT: You completely are, say, satisfied that you understand --

MS. CURTIS: I have no questions.

THE COURT: You just have no questions. All right.

Mr. Vie, do you have any questions you want to

01:45:33PM ask of this witness?

MR. VIE: Yes, Your Honor.

THE COURT: All right. Would you come to podium, sir.

Do you have a copy of your report with you? If

01:45:39PM not, let's get a copy of it to you. I think I have got some

copies here.

DIRECT EXAMINATION

BY MR. VIE:

Q. Good afternoon. I just have one or two questions just to clarify, as the Court said, the procedures under which the report was prepared.

On Exhibit 1 to the report --

A. Yes.

Q. -- you provided a statement of income, receipts, expenses, and disbursements for the period the Court directed; is that correct?

A. Yes, sir.

Q. In conclusion, on page 2 of that report, where you indicate, at the bottom, a net of income receipts and less value of stock distributed, if you could explain, what is that trying to capture?

A. This is trying to capture either -- during the time frame in question, either the receipts received or dividends in kind from the dividend distribution -- excuse me, dividend reinvestment accounts, less any amounts paid or any stock distributed.

Q. So this number at the bottom of page 2, the net of income number, this doesn't reflect actually the value of this estate?

It doesn't include the actual stock value that

remains in the estate?
A. Absolutely not. To do something like that you would need to get into something with a balance sheet -- and things of that nature.
01:47:40PM Q. What we are being provided here is more of a statement of money going out and money coming in?
A. Correct.
Q. The other exhibit, Exhibit -- the exhibit that relates to your recapturing the stock distributions that were made, is
01:48:04PM there an Exhibit 3?
Is that where that is located?
A. Yes.
Q. Stock distribution analysis?
A. Correct.
01:48:10PM Q. These are all -- these are all distributions that took place during the time that Ms. Brunsting was alive, correct?
A. From December 21st, 2010, to her demise.
Q. I understand.
Specifically, you did not find any evidence of
01:48:28PM any stock distributions that were made to anyone after the date that she died, the date of her death?
A. Correct.
THE COURT: Mr. Vie, what is the date of her death? Establish that.
BY MR. VIE:

Q. November 11, 2011?
A. Correct.
Q. So during the period of time that she was the beneficiary of the trust and had the right to direct gifts and payments --
01:48:52PM THE COURT: "She" being?
MR. VIE: Mrs. Brunsting, Nella Brunsting.
BY MR. VIE:
Q. The only transactions that you found for stock distribution, as you have noted in Exhibit 3, was at the time
01:49:03PM she was alive and could direct those distributions?
A. To the first part of your question, I don't think I have enough information to respond. But from all of the documents that we had and everything appeared to tie, these are the distributions out of those accounts in that time frame.
01:49:24PM Q. Thank you.
Could you -- in addition to the documents that we provided, you asked for and we provided a Quicken file, an electronic file?
A. Correct.
01:49:34PM Q. If you could explain to the Court what that file was, what you found in it, and how you used it.
A. That was an electronic accounting file that I asked for and that you had given me, and it was what I would generally term an electronic checkbook, which would show -- gave
01:50:00PM information about a date, an amount, and the payee.

Q. And what account the payment came from?
A. To a limited extent, yes.
Q. How were you able to use that, then, into what became the master's report?
A. We used that in conjunction with the review of bank statements and other paper documents, brokerage firm account, information to create our database.

MR. VIE: No further questions.

THE COURT: I have a few, and this is to primarily supplement the record.

I want you to go back, Mr. West, and give us a general overview of what you did and -- and what these exhibits mean in terms of the income and expenses associated with this report.

THE WITNESS: Yes, sir.

My report is comprised of an introduction where I gave some of the background of the complaint to a limited extent which has been addressed today. Then I gave a timeline of records received. I started that process with calling the defendants' attorney. I set up the meeting with him. We had a meeting within a week or ten days of my initial call.

I received, at his office, a number of paper files and a number of records on -- in electronic format in CD -- on CD's. I was also given a schedule of those documents that they were giving me and a list of documents that they

were not giving me, but which they were working towards obtaining.

THE COURT: Did you have the impression that this was a combination of records, some of which had been -- which were the, let's call it, original handwritten-type records, along with records that maybe had been prepared or were being prepared by the attorney for the defendant?

THE WITNESS: My broad answer to that is yes. Some were original documents that you could tell had come directly from the brokerage firm or a bank. Some were bank statements that appeared to have been downloaded over the Internet, which looked completely normal to me.

I have looked at literally thousands of documents of this nature over the years. Balances, account numbers, everything tied. I didn't think that anything had been created to be given to me.

THE COURT: By saying you were given a CD, what are you referring to?

THE WITNESS: A plastic disk.

THE COURT: I understand. What was contained on that?

THE WITNESS: Those were bank statements.

THE COURT: Downloaded from?

THE WITNESS: Yes, sir. For the most part, the paper documents -- they gave them to me, for the most part, in

paper format and electronic format.

THE COURT: But you didn't have the impression that this was a way that the records had been kept; this is just the way they had presented them?

01:53:40PM THE WITNESS: I can't tell if they were kept that way, but they had been compiled, and I think they have probably been compiled by counsel's staff.

THE COURT: All right.

THE WITNESS: As -- I received those approximately 01:54:00PM the first of June -- actually, there's some dates reflected in the report. About a month later I received a -- some more paper files and some more CD's with information on them that answered a number of -- submitted a number of the documents that had been missing on the first turnover of documents.

01:54:36PM As that was -- as that information was being processed from time to time, I had e-mails with defendants' counsel asking for particular questions or asking for more information to which, for the most part, he was able to respond, or if they weren't available, he -- he just told me 01:55:02PM so. So, I felt like he was trying to do the best he could.

THE COURT: At the end of the day, let's say sometime the latter part of July, when you had your hands full of the documents, did you have the impression that you had all of the documents that you needed to complete a proper and 01:55:29PM complete report?

THE WITNESS: For the most part, Your Honor. I listed in my report some accounts or statements that were not received. Defendants' counsel had explained why they were not received, or I believe there were a few things they were still trying to get. I conferred with my associate, who did a great deal of the work, you know, with my work and supervision. There were certain documents that we didn't have, but we did have some summary statements or some quarterly-type statements.

01:56:19PM I can't say for certain. I felt like we did have what we needed to present a good report. Not anything is a hundred percent right, but I felt like we didn't have any really big unexplained gaps in the things that we were given.

THE COURT: That pushes you over into the work performed area where you are now talking about.

So is there something else in that area that you need to bring to the Court's attention?

Basically that you received the documents -- I'm just following.

01:57:05PM THE WITNESS: Yes, sir. We felt like we had substantially all of the documents or a very high percentage, and I'm saying that from years of experience as an accountant. If I had really felt uncomfortable about anything, it would have been highlighted and really brought to the forefront.

01:57:40PM THE COURT: Whatever is necessary, you saw.

THE WITNESS: Yes.

THE COURT: In the summary of the accounts received, you show several bank accounts and several, let's call them, stock accounts or stock brokerage accounts, various investment accounts. I don't know if these are stocks or just simply accounts where you would invest money and they would purchase stock. The point is that these are -- appear to be a substantial number of accounts.

Are you of the opinion that these are all the accounts -- first of all, these are the accounts provided?

THE WITNESS: They were the ones provided. I think they were all that was provided. The plaintiff, in response, had raised the issue about some Treasury bills or Treasury bonds. I don't believe we saw any information in regards to them.

Now, technically, I would like to see the bonds. And technically, if it was something where they just sat there and interest was paid in a lump sum at a future date, and there was no income or cash income receipt activity during the period, then they be wouldn't reflected on here. But if it was an accrual-type income, then it should have been reflected.

THE COURT: So these accounts, as I understand it -- and you are distinguishing between the accounts that may be in existence but just have not reported income on an accrual

basis, but these accounts are reporting on a quarterly or annual basis income, and/or fees, or whatever else that might be reflected against the account.

THE WITNESS: Yes, Your Honor, all these accounts.

01:59:41PM THE COURT: For example, if there were Treasury -- are Treasury bonds, and they are paying whatever interest they are paying, that certainly could be -- that might be -- you don't have those, but that interest theoretically, I guess, could be applied back into the principal and, therefore, would 01:59:59PM not be reflected on a statement.

THE WITNESS: Correct.

THE COURT: Okay. Tell us a little bit about the report exceptions and the missing documents area there on page 6.

02:00:11PM THE WITNESS: These were -- as it is discussed here, there were some accounts that we did not have, or statements. In some cases, they were quarterly reports that were not -- the second quarterly reports were not available yet, or I was told they were not available yet in the latter part of July, 02:00:41PM which was quite often the case, but that they could be supplied, if needed.

There were a couple of other accounts where we may have been missing a monthly account or maybe an earlier quarterly account, but we had a latter period account where, 02:01:02PM for the most part, everything -- we could kind of trace our

way through the missing period. Again, I didn't see any great cause for alarm.

And then there were a number of things, disbursements, that we did not have documentation for, and those were explained to me that, for the most part, that they just didn't exist.

THE COURT: Okay. And these disbursements did not have -- did not have a paper backing. These would just be, let's say, for example, a check that might have been written for an amount of money, but there was no -- for your records there was no receipt or document indicating why that disbursement was being made. It might be reflected on the check itself.

THE WITNESS: Correct. We were able to go back to the pictures of check facsimiles and, you know, confirm that.

THE COURT: Okay. All right. Now, you've also listed on page 8 a number of outstanding shares. These reflect the transfers that you say were made before November 11th of 2011, I gather. And then other stocks, perhaps, that might have -- that might have been reinvested, or income that might have been reinvested.

Am I seeing that right?

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. You make a statement on page 9, at the end of that section, that indicates that

there are certain stocks available.

Is that the total of all stocks outstanding shares that are part of the trust?

THE WITNESS: Yes, sir, to the best of my recollection.

THE COURT: Those are three different, I believe -- three different shares -- three different companies -- that might not be the proper term. How would you say it?

THE WITNESS: I think it was four -- Chevron, Exxon, John Deere, Deere Enterprises, and Metropolitan Life.

THE COURT: Okay. Those are the four. Okay. All right. And then you go on to make comments on certain accounts, and this is some of which you maybe already have stated having to do with the sale of certain securities and the disbursement. I'm not sure.

Is that what that is about?

THE WITNESS: Yes, sir.

THE COURT: One of the areas that you touched on earlier had to do with, for example, a check that may have been written to a family member that may or may not have had some document behind it. We are looking at the top of page 10, where is says, "Many of the payments were noted as reimbursements." These would be checks that would reflect reimbursement but not necessarily another check that showed the payment was made.

THE WITNESS: Correct. The check was written to the individual from the Quicken files. It would say reimbursement for -- automobile repairs type of thing. And on the Quicken files, it may have been in that automobile repair expense account. But for purposes of this report and the issues raised in the complaint, I felt that it was important -- it was important to make this some special category.

THE COURT: All right. Now, going to Exhibit 1, this is the summary statement, is it not?

I say summary statement. It's a statement of income, receipt and expenses. Behind that would be the exhibits. I say exhibits, would be other exhibits that would reflect the individual checks written and/or to whom they may have been written in Exhibit No. 2. And in Exhibit 3 would be the distribution analysis of the stock payments.

Is that what I'm having there?

THE WITNESS: Yes, sir.

THE COURT: All right. So, just let me take a look at this. It shows, I gather, that they had an opening -- a beginning opening of 127,000 -- almost $128,000 in farm income as a beginning item there.

THE WITNESS: Yes, sir. Farm rent during the time frame in question.

THE COURT: And, so, what you've done is you've accumulated all of the income from the farm for this period,

"this period" being the period that I requested that you do, the December 21, 2010 through May 31, 2013.

THE WITNESS: The deposits we identified for farm rental income.

02:06:38PM THE COURT: And that would be just a little over a two-year period, two years and a few months.

THE WITNESS: Yes, sir.

THE COURT: All right. In addition to that, you show dividend income, interest income.

02:06:52PM And by long-term capital gains and short term, are you reflecting there some income from Exxon or one of these companies?

THE WITNESS: No, sir. Actually the dividends from Exxon or Chevron would be in the dividend income amount.

02:07:13PM THE COURT: On Exhibit 3?

THE WITNESS: Excuse me.

THE COURT: Oh, I'm sorry, no, it would not be.

THE WITNESS: I'm sorry, Your Honor. Could you repeat your question.

02:07:22PM THE COURT: I was asking where did this long-term capital gains come from.

THE WITNESS: Oh, I'm sorry. The long-term capital gains and short-term capital gains, those were reported on the stock brokerage accounts. Those are called flow-through amounts from mutual funds and things of that nature.

02:07:38PM

THE COURT: And then the income of 183,000 is stock sale. That's the liquidation of the stock -- did that include the liquidation of stock before 11/11/11?

THE WITNESS: That was the liquidation of stocks during that time frame, other than the stocks that were disbursed in kind.

THE COURT: Okay. So this is a separate liquidation.

THE WITNESS: Yes, sir.

02:08:11PM THE COURT: Or a separate income, should I say. This is income.

THE WITNESS: It's stock liquidated.

THE COURT: This is income from the sale of certain other stocks that has now has been liquidated and it brings

02:08:22PM total income to about $216,600,000.

THE WITNESS: Yes, sir.

THE COURT: The miscellaneous income is just other income that -- what would that be, sort of like what?

THE WITNESS: To be honest, Your Honor, without

02:09:01PM looking at the underlying documents, I can't remember right now. But it was a number of small items that didn't fit one of these other accounts that are listed in Exhibit 1.

THE COURT: But it is reflected in the deposits of the account?

02:09:17PM THE WITNESS: Yes, sir.

THE COURT: The pension income, and I'm looking at Social Security income. Who is getting Social Security income to go into that account at this time?

I believe both the husband and the wife are deceased, right?

THE WITNESS: Mrs. Brunsting, she was alive for about 12 months.

THE COURT: You are right. Tax refunds, that would also be reflected. This is the sale proceeds from the house. That's all -- so we are talking about a total of 830-plus thousand dollars during this two years or two- to three-month period?

THE WITNESS: Yes, sir.

THE COURT: And then we're talking in the next section about expenses, medical care, in-house care, and medical care, and all of that coming to the 122,000, more or less.

THE WITNESS: Yes, sir.

THE COURT: The pet care and pet food and all of that, that doesn't have anything to do with the farm. This must be at the house, right?

THE WITNESS: Yes, sir.

THE COURT: Okay. And veterinarian expenses.

So we are talking about total expenditures of about half of what the income was, right?

THE WITNESS: Yes, sir.
THE COURT: And then you said net income, receipts, and expenses, disbursements.
How are you distinguishing that from total
02:10:55PM expenses and disbursements?
THE WITNESS: That's just the net of the total incoming receipts of 830,000 less the total expenses of 418.
THE COURT: Okay. And then you show the 298,000 in stock -- in stock transfer to family or whatever. This is a
02:11:20PM value of stock. This is the value beyond what was sold and became income.
THE WITNESS: Yes, sir.
THE COURT: So we are looking at -- right at almost 500 -- well, 300,000, basically, that was transferred
02:11:39PM directly, apparently, by the estate before -- before Ms. Brunsting died in November 11, 2011.
THE WITNESS: Yes, sir.
THE COURT: More or less.
THE WITNESS: In May and June of 2011.
02:11:56PM THE COURT: What two or three numbers are you putting together to come to the 120,000 at the bottom?
THE WITNESS: 411,328 less 298,976 gets me to the 112,346.
THE COURT: All right. What you don't have or what
02:12:19PM didn't do and were not asked to do was to do an asset

liability --

THE WITNESS: Correct.

THE COURT: -- sheet.

Are there any other concerns or statement that you need to make regarding this report before -- before I ask you a question regarding your billing?

THE WITNESS: The one item is, after the filing of my report, there was a disbursement for $6500, which had been put into miscellaneous expenses because I had no backup for it.

THE COURT: It was a one-time payment of 6500?

THE WITNESS: Yes, sir.

THE COURT: Where is that reflected on page --

THE WITNESS: I'm sorry. Exhibit 1, page 1.

THE COURT: Page 1, Exhibit 1? All right.

THE WITNESS: Towards the bottom, Miscellaneous Expenses. That shows miscellaneous expenses $6753. $6500 of that amount should be reclassified to checks or cash to family members.

THE COURT: What you are calling miscellaneous expenses would be -- say that again. I'm sorry.

THE WITNESS: That miscellaneous expense, there was -- $6500 of that amount we found -- defendants' counsel confirmed for me, subsequent to the filing of the report, that that was a distribution to a family member.

THE COURT: Okay. So this is not a part of the pre -- part of the distribution made by Ms. Brunsting before her death. This was expenses or monies that were paid to a particular family member -- a single family member or maybe two family numbers, whatever the number might be, that were made after that date?

THE WITNESS: Let me -- let me confirm that. That was subsequent to her demise.

THE COURT: What page are you looking at?

THE WITNESS: On Exhibit 2, page 16.

THE COURT: Where it says --

THE WITNESS: About two-thirds or three-quarters of the way down the page, it says "Miscellaneous Expenses."

THE COURT: Page 16 did you say?

THE WITNESS: Yes, sir. Exhibit 2.

THE COURT: Okay. Miscellaneous, and then it shows a total of something like... co-op and then withdrawal, and then Houston Metro, those together totaling 6753.72.

THE WITNESS: That middle entry on November 14th of $6500 should now be reclassified --

THE COURT: As disbursement?

THE WITNESS: -- as disbursement to family members.

THE COURT: As disbursement. You've got a code there of W-D-R-L. What does that mean to you?

THE WITNESS: Withdrawal. This withdrawal on the

bank statement.

THE COURT: It is my lack of accounting acumen. It's not your fault. I'm trying to make sure I understand, so that if I have a question, I can ask you.

02:16:29PM Now, as it relates to your billing, it does not include an appearance here today, as I understand it, or the time that you have spent. You have already submitted a billing to the -- bill to the Court for payment, have you not?

THE WITNESS: That is correct.

02:16:43PM THE COURT: And except for whatever time has been spent since this submission, have you received any objections from either the plaintiff, Ms. Curtis, or from the defense concerning the payment of your expenses?

THE WITNESS: No, sir.

02:16:59PM THE COURT: Does your billing include the legal advice necessary that you received as well, or was it just separately an accounting function?

THE WITNESS: Mine was separately an accounting function, and I also submitted a separate invoice from my

02:17:18PM counsel.

THE COURT: Have you received any objections from either plaintiff or defendant in that regard?

THE DEFENDANT: No, sir.

THE COURT: Ms. Curtis. Anything else?

02:17:29PM MS. CURTIS: No.

THE COURT: Mr. Vie?

MR. VIE: Just one thing, Your Honor.

BY MR. VIE:

Q. Just to be clear, because the Court has asked about the timing of this last expense that you mentioned being reclassified.

A. Yes, sir.

Q. Okay. If I understand the miscellaneous expense, the check that is noted for the $6500, that is prior -- that's three days after Mrs. Nella's Brunsting's death?

A. Correct.

Q. Do you recall what the transaction was, the $6500 transaction?

A. I believe it was to Carol Brunsting. I feel confident about that. And I believe the -- the explanation that your firm gave me was that -- it was to be, I guess, used to help deal with some of her funeral expenses.

Q. Was the money redeposited at some point after that?

In other words, the money that had been taken out should there be some funeral expenses or other things necessary, would that money have been put back at some point?

THE COURT: Why don't you show him where you are talking about.

MR. VIE: Well, I understand where his reference was on page 16, where he highlights the miscellaneous expense of

6500.

THE COURT: I know, but how would he know whether or not it is put back unless you know where it is?

MR. VIE: If he has a corresponding entry for a deposit for 6500.

THE COURT: I see.

THE WITNESS: I don't recall one.

BY MR. VIE:

Q. If there was one, where are the costs like that reflected in the report?

A. It would probably be under a miscellaneous --

THE COURT: Keep your voice up, Mr. West.

THE WITNESS: I would think it should be under miscellaneous income, and I don't find it there. There's a possibility it could have always been misposted, but I would need to look through the ledger in total.

BY MR. VIE:

Q. Would you -- it was -- your understanding, it was represented to you it was not a gift; it was some expenses that were funds made available for funeral expenses?

A. That's what I was told.

MR. VIE: No further questions, Your Honor.

THE COURT: All right. Well, your understanding is based upon what counsel told you. It had nothing to do with and independent audit, right?

THE WITNESS: Yes.

THE COURT: You may step down, sir. Thank you very much.

All right. If there is no objection, I will ask -- no objection to the report and the invoice request of counsel for himself, as an accounting function, as well as advice of counsel, if there's no objection, I'm going to order that those be paid.

Any objection, Ms. Curtis?

02:20:30PM 02:20:51PM

MS. CURTIS: No, Your Honor.

THE COURT: Mr. Vie, speaking on behalf of your clients?

MR. VIE: No, Your Honor, no objection.

THE COURT: All right. Okay. All right. That's all we have. Thank you very much, and that will take care of it.

02:21:00PM

No, no, no. I'm sorry. All we have with accountants. If they want to leave, they can. There are some other motions we need to address.

MR. MILLION: Your Honor, would you like us to submit a proposed order?

02:21:14PM

THE COURT: Would you do that? It would make it a lot -- well, how about that, just happen to have it right there, right?

You shared this with -- the expense paperwork,

02:21:40PM

you shared the expense report and/or request for payment with both Ms. Curtis and with Mr. Vie?

MR. WEST: Yes, Your Honor.

THE COURT: All right. Ms. Curtis, you have some other -- well, I will start with you, Mr. Vie. I believe you have filed a motion that has drawn some -- you all want to be excused?

MR. MILLION: Yes, Your Honor. I do want to bring one other thing to the Court's attention.

THE COURT: Okay. Go ahead, sir.

MR. MILLION: In the pleadings that were filed by the plaintiff and defendant, there has been some indication that they are wanting additional work to be performed by the special master. And I know one of the proposed forms of order said you've got to do something within 10 days.

Just given the tax season issues with respect to corporate filings and such, any additional work that the special master might request to do, he is happy to do whatever the Court needs. However, he would need more than 10 days to be able to comply with that.

THE COURT: Yeah, I think I might have said this to both sides. If I did not, you will hear it now.

My purpose in asking Mr. West to come in was not to make him a person for them to utilize to do any of their work. He was working for the Court to bring some

matters to the Court's attention that would be too much contention between the parties for me to ask either side to present anything to me that I could, at least in good faith, at the time, rely upon as a way of making some determinations.

02:23:42PM So I wanted to find out where the income was and what had happened to it. Those were some of the allegations made by Ms. Curtis.

The function of doing other financial reports I think the parties should be able to handle and do themselves.

02:24:02PM And if they choose to employ someone to do it, they certainly will be able to do it. We have got fundamentals of stuff ready and in place for them to go ahead and get that done.

If there is some need, certainly, Mr. West may be asked do it. If so, it would be by the Court, not by the

02:24:20PM parties.

MR. MILLION: Thank you, Your Honor.

THE COURT: Thank you very much, gentlemen. Have a good day.

Ms. Curtis -- I'm sorry. Mr. Vie, you filed a

02:24:32PM motion to -- let me just get it out here -- a motion to -- request for the renewal of the farm lease, I believe. Let me see if I can find that document number.

I believe that's Instrument No. 65, filed about 10 days ago.

02:25:03PM MR. VIE: Yes, Your Honor.

THE COURT: And as I understand, Ms. Curtis, that you have reviewed that, and your objection is, essentially -- correct me if I am wrong -- that it is automatically renewed at this point because no objection was filed and no disapproval of that renewal occurred within the time frame that needed to be made.

Am I correct?

MS. CURTIS: Yes, Your Honor.

THE COURT: So in that regard, the objection is simply a matter of record as to how things are and the -- the renewal of the farm lease, while the Court might have the authority to cancel it, it is automatically renewed. It would take some affirmative action.

So why should I cancel it? Tell me why I should cancel it.

Is there any basis for me to cancel it at this point?

MS. CURTIS: The farm lease?

THE COURT: Yes, ma'am.

MS. CURTIS: No, Your Honor.

THE COURT: The motion will be granted unless there is something additional I need to know, Mr. Vie, about this before that occurs.

MR. VIE: No, Your Honor.

THE COURT: All right. I believe there was an order

entered, and I know there was one entered, but I believe the second order was entered for the payment of certain property taxes.

That has been taken care of, right?

02:26:28PM MR. VIE: Yes, Your Honor. You have already entered that.

THE COURT: All right. I have reviewed your responses to the report. It seems to me the next item, then, has to do with objection that you have made -- I'm trying to

02:26:40PM figure out what you meant, Ms. Curtis, by "recommit matter to master for consideration."

Tell me what you are talking about there. You filed this on September 3rd. This was filed, what, today?

MS. CURTIS: This was filed this morning.

02:27:04PM THE COURT: Wow. You are faster than the lawyers are. Where were you when you filed this?

MS. CURTIS: In the clerk's office.

THE COURT: All right. I didn't know if you were filing electronically or not.

02:27:16PM MS. CURTIS: I do not file electronically.

THE COURT: Well, you filed this motion -- or objections to defendants' motion for order to recommit matters to master for consideration.

Tell me what you are talking about there.

02:27:31PM MS. CURTIS: Well, there is a letter that Mr. Vie

provided to Mr. West in support of missing documents and other questions that the master had. It is dated July 15th, 2013. It was Appendix Tab 1 in Document No. 67 filed by the defendants, which is their response to the report of master.

02:28:02PM THE COURT: All right.

MS. CURTIS: And I am objecting to even spending another penny with the master when there is nothing substantive in here. This was all just excuses and explanations.

02:28:23PM THE COURT: You mean on the part of the defendants?

MS. CURTIS: The defendants, for missing records or how they categorized the expenses, which was not what the master was instructed to do. He was just instructed to list the income and the expenses that occurred for this period of

02:28:45PM time.

He did the best he could to categorize these things. He had questions, like about the 6500 in miscellaneous income. And he did not receive third-party receipts or original statements or any documentation. All the

02:29:04PM master received were excuses for these transactions, which is not the basis of the master's report. He was just asked to report on the income and expenses.

So I think this entire thing is just irrelevant and a waste of time.

02:29:25PM THE COURT: So your objection and -- your objection

there is to -- has to do with the statements being made in the defendants' report or request or statements to the master, and that no further work should be done by the master -- special master regarding these documents and these statements?

02:29:50PM MS. CURTIS: That is correct.

THE COURT: I think I've already cured that. I've just let him go.

What else did you have there? You filed, as well, I think a motion to show cause why a judgement of civil

02:30:09PM contempt should not be -- and I know they have not had a chance to respond to this. But that's also been filed before the Court. But is there anything else, other than that motion pending?

MS. CURTIS: I have not filed anything else, no,

02:30:26PM Your Honor.

THE COURT: All right. So, you are coming out of California, and I'm trying to find out how we -- how soon would you be ready and what evidence would you be presenting on this? Because I don't want to have you just coming back

02:30:41PM and forth, expense to you.

MS. CURTIS: I have a statement to make. I don't know if that will help.

THE COURT: I don't know if Mr. Vie is prepared to respond, but I will permit you to make your statement.

02:30:51PM MS. CURTIS: I don't expect a response. I just came

prepared with this statement.

THE COURT: Okay. Go right ahead, then.

MS. CURTIS: "The absent of immunity results in responsibilities for which there is no exemption. Since no one may be in legal relation with their self, trustees, de facto or de jure, encumbered with duties, and empowered to perform such duties are bound in a jural relation to the beneficiaries, which confers upon said beneficiaries specific rights which are well-known to the law.

"Among such rights is a distinct and calculable property interest in a complete and accurate accounting. Withholding such information, whether by failure or refusal, constitutes a palpable injury to a beneficiary evidenced by the resulting inability to cure and perfect their claim.

"Said failure to perform the duties of trustee endows the beneficiary with the legal powers to act against said trustees in order to lay claim to that which is [property] -- properly theirs and to which they are entitled.

"I object to the July 15th letter from defendants to the master insofar as it contains excuses and explanations that are prejudicial, non-probative, and thus immaterial. The time for these explanations and excuses has long since passed. I would, however, offer the letter into evidence as an offer of proof that the omissions contained therein establish evidence of facts that are clear, positive,

uncontradicted and of such nature they cannot rationally be disbelieved, and the Court is, therefore, compelled to conclude that those facts have been established as a matter of law.

02:32:36PM "Defendants admit that they failed to keep books and records, and, therefore, are incapable of providing a full, true and complete accounting. Further, defendants admit to self-dealing, commingling, and [applications] of -- misapplications of fiduciary attached to expressions of bias.

02:32:58PM "I would also like to offer defendants' response to plaintiff's request for disclosure and defendants' answer into evidence as an offer of proof that defendants refused to provide non-proprietary trust instruments and admit that they can provide no evidence of notices to the other

02:33:17PM co-beneficiaries of any of their acts from alleged changes to the trust, changes of trustees, changes in trustee compensation or any of their other proclaimed acts of trust administration.

"Plaintiff's claim for breach of fiduciary is

02:33:33PM ripe for summary judgment on the merits of these admissions and the accounting that supports the admissions. Plaintiff asks this Court for summary judgment on the claim for breach of fiduciary and asks that defendants be removed from conducting any further trust business.

02:33:48PM This is Texas Trust Code 113.082, Sections 4, 5

and 6(b). Plaintiff further moves that this Court bifurcate all the remaining issues, including questions of damages, until more necessary information can be obtained."

THE COURT: I saw attached to your motion what I believe to be a request for certain discovery.

That is certain information that you have wanted provided to you; is that right?

MS. CURTIS: It is information I wanted provided to me.

THE COURT: All right. But once that information -- let's assume that that's what it is and that they are going to respond and give you certain information pursuant to your request, and now you have got the information, let's say.

What is your next -- you are asking the Court, I gather, to have a hearing to determine whether or not the parties should be removed as trustees. You understand that would require the Court then appointing someone to serve as a trustee.

MS. CURTIS: Yes, Your Honor.

THE COURT: And then the parties would then have to, then, present to the Court, I gather, the name -- the name or names of individuals who they believe -- whom they believe would be qualified to handle those -- those functions, and could not -- it would seem to me, because of the controversy,

it doesn't seem it could include you or another family member.
Do you see the problem there?
MS. CURTIS: I do understand.
THE COURT: So is that what you are asking the Court
02:35:22PM to do in your -- that's what I think I heard you say.
Is that right?
MS. CURTIS: Yes, that's correct.
THE COURT: Why haven't you gone on and hired a
lawyer?
02:35:32PM MS. CURTIS: Because these are things that -- these
are things that I don't need an attorney for. I'm going --
THE COURT: I don't disagree that as a matter of
course, you are entitled to what you are requesting. The
problem is that you are not -- you are so far away from the
02:35:53PM courthouse, and it creates some problems with the
communication that -- when I say "communication," meaning if I
want to have a hearing on something, you either have got to
fly in here, or I have got to have you on the telephone. And
I'm not really sure the telephone is a proper way to have
02:36:10PM these types of proceedings.
If you had counsel, particularly local counsel,
that's someone who could make motions and proceed to do
discovery and all of that on your behalf. It seems to me that
would be a much easier way to proceed. I'm just throwing that
02:36:28PM out there for you.

However, under the rules of discovery, I'm not quite sure that the way that you have presented this is a way in which the defendants are required to respond. In other words, you have attached to your motion, your ex parte motion -- and I think you filed it under seal. I'm not sure why.

Why did you file it under seal?

MS. CURTIS: I just gave it to the clerk this morning.

THE COURT: Okay. So it doesn't really need to be under seal. There are no -- I don't think there are any -- we generally have things filed under seal that would -- where there may be some indication of information, family private information, confidential information, that should not be disclosed to the public. But this is a public proceeding, so there is nothing, I gather, as far as you know that --

MS. CURTIS: No, Your Honor.

THE COURT: -- would require that. I'm going to, then, have it removed from being under seal. I don't know if counsel has gotten a copy of it yet, but he would be able to access it. You should provide him a copy of it.

MS. CURTIS: I did.

THE COURT: Okay. Very good. But if you look at what you have got as p-68. Does that mean there's a p-67 someplace and a p-66?

MS. CURTIS: The p-67.

THE COURT: It's attached to the motion. That's what I am referring to. It's attached to your ex parte motion. It is a five-page document, demanding --

02:38:11PM MS. CURTIS: I have it. It was the only exhibit that I attached.

THE COURT: But this suggests there are 67 other exhibits out there somewhere, right?

MS. CURTIS: Yes. I have just continued adding

02:38:28PM exhibit numbers from the very beginning.

THE COURT: Okay. So some of these exhibits are attached to your original proceeding?

MS. CURTIS: Yes, Your Honor.

THE COURT: And all along there may have been some

02:38:38PM that were added to or attached to your motions, and you are now at number 68. That's what that is. Okay.

MS. CURTIS: Yes, Your Honor. And --

THE COURT: Have you read the rules, Federal Rules of Procedure related to discovery requests?

02:38:55PM MS. CURTIS: Yes, Your Honor. I have something to say about that, also.

THE COURT: Well, let me say my say first. And that is, this is not going to get.

MS. CURTIS: I understand.

02:39:04PM THE COURT: Go ahead and say your say.

MS. CURTIS: "The public policy considerations involved in a common law information demand pursuant to a fiduciary obligation are very different from those involved in a discovery request under Rules of Civil Procedure for the following reasons: If trustee is administering property, the trust estate that belongs to the beneficiaries of the trust. In other words, the beneficiaries hold equitable title to the trust estate.

"The trustee acting in his individual capacity usually has no personal interest whatsoever in the estate of the trust that he is administering. Consequently, the information requested does not belong to the trustee. In legal discovery requests, a party to a lawsuit is requesting proprietary information and documents that belong to another party. This is not the case with respect to equitable demands for information.

"The trustee of a trust holds the trust estate for the benefit of the trust beneficiaries who have an equitable interest in all information and documents. There is usually a financial disparity between the beneficiary who is using his personal financial resources to obtain information and the trustee who is using the estate of the trust to pay for the cost of his compliance with the information demand. In essence, the beneficiary is paying everyone's fees.

"This situation does not occur in legal

discovery requests where independent parties are involved in litigation. The beneficiary of a trust is the only person authorized to enforce the trust. It is not possible for him or her to perform this function without disclosure from the trustee regarding how the trust is being administered. Where, as here, the trustee is conflicted, the duty to disclose is even higher than that of ordinary corporate trustees.

"In discovery, under the rules the scope of discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. In common law disclosure, the scope of discovery is material facts known to the trustee that might affect the beneficiaries' rights.

"There is no law in place allowing formal objections to reasonable common law disclosure demand for information directed from a beneficiary to a trustee. Unlike interrogatories, there is no limitation on the number of demands for information that can be made on the trustee if the trustee breaches his duty to disclose his subject to all equitable remedies. Moreover, his breach is a factor in the award of legal fees in the overall case pursuant to Texas Trust Code 114.064."

I have been asking, first, nicely, then I made a common law demand in writing in late 2011, after my mother passed away. I made a statutory demand for the exact same

information I was entitled to in January of 2011. And to this day, I have gotten nothing but excuses and explanations for records and documents that I am entitled to as a beneficiary.

THE COURT: All right. Let me ask you, when you say you have gotten nothing, are you saying that you have received absolutely nothing from defendants or their attorneys?

MS. CURTIS: I have received nothing responsive.

THE COURT: So now there is an argument as to what responsive is, isn't it?

So here's what I am getting to. These kinds of disputes as to whether or not -- whatever you might have received -- and I don't even suggest that it's what you requested, but whatever the dispute is, these matters are matters that now are in this Court. And you are asking me to address them, and I'm in no position to address them because I don't have the documents before me that you do have.

And the way this request has to be made now is not in a common law fashion as you would do if you were writing a letter to a person and requesting. That simply sets you up to go to court and get a judge to enter an order that you be provided with the documentation that you believe you are entitled to. My job would then be to decide whether or not the information that you have requested is relevant or important to any issue in the case.

Because the point is, the bottom line here, in

my opinion, and it seems where you are headed, is that you are asking this Court to do one of several things, or maybe several things.

One, it sounds like you are asking the Court to 02:44:07PM remove the trustees and appoint a trustee. I think I heard you say that.

Second, it seemed to me you want the estate dispersed so that you have your share of the estate and it is not under the supervision and/or hands of your sisters.

02:44:24PM And, third, you want your sisters or the trustees, whoever was acting as -- I think it was both of them, co-trustees, since November 11th of 2011, or whatever period of time. You want them to account to you, that, by accounting, I think I hear you saying you want them to 02:44:42PM reimburse you for what they have taken that doesn't belong to them, as a disbursement to them, assuming that that has occurred.

And it sounds to me like you are asking for attorney's fees that have not -- following through. And this 02:44:55PM would not come from the estate per se. It would come from them individually. That's what I understand I am hearing.

So, there are some documents that may be important or relevant to those kinds of requests, but everything wouldn't necessarily be. Whether or not -- for 02:45:14PM example, if you are looking for do you have certified copies

of letters, or whatever, that might have gone from this person to that person, that might not be relevant.

What is relevant, it seems to me, is that there is a money issue here, and it can be solved by accounting and disbursement. One of the things that the Court is going to have to get around to, it seems to me, because I'm not sure that you are going to do it voluntarily, or the parties or the defendants, is at some point an asset/liability statement has to be prepared and presented in this case. Otherwise, there's no way for the Court to know what the value of the estate is and/or what the -- what any disbursements might look like. I'm not sure that disbursement is the proper venue, but I am certain that that's part of what you are requesting.

Am I correct in some of that?

02:45:30PM 02:45:50PM 02:46:07PM 02:46:24PM 02:46:45PM

MS. CURTIS: You are correct in almost 99 percent of that, but I would like to know where the EE bonds are.

THE COURT: The who?

MS. CURTIS: The EE Treasury bonds.

THE COURT: Here's my point. You can ask that, but you need to do it. You can ask for a revelation of these documents, these Treasury bonds, whatever else you think that's missing and have not been accounted for. And the reason, theoretically, at least in part, that they have not been accounted for is that they are not paying an interest as an income to the estate, necessarily. The interest,

apparently, is being accumulated in the bond itself. So you would have to cash the bond to get the principal and the interest. That may be an explanation for it.

You are entitled to know what those assets are, but you've got to ask for them. What I said to you was the way that you attached it to this motion is not the way that it should be done under the rules of discovery. So simply file your motion for requesting whatever it is that you are requesting discovery wise with counsel, Mr. Vie, who has the duty to either object to what you are requesting or to respond. Okay?

But I don't want it attached to your motion for an order to show cause because that's a different -- that's a different vehicle. This is discovery attached to something that it should not be attached to. So you need to file a separate discovery motion. All right? Or at least provide that -- file that request with Mr. Vie.

MS. CURTIS: Excuse me, Your Honor. But the reason I attached the demand for production of documents, this is a -- this has already been given to defendants. They have already responded to it.

THE COURT: Okay. Okay.

MS. CURTIS: And the reason that I attached it is because I still don't have the information that I need to be able to make a decision about anything having to do with my

beneficial interests.

THE COURT: So that's the basis for this application, for civil contempt.

MS. CURTIS: Yes, Your Honor.

02:48:30PM THE COURT: I see. Okay. Now, see, I don't know what's going on outside of the Court. So I apologize for being too far ahead of you in that respect, or behind you, whatever.

The point is that this application, then, would 02:48:44PM require the Court to conduct a hearing. They have a duty to respond and an opportunity to respond within a certain number of days. It would require a hearing, and, in my opinion, it would require a hearing here in open court so the record is made of whatever that proceeding is. So, there you have it. 02:49:05PM It is going to be -- I cannot let you participate by telephone.

MS. CURTIS: I understand.

THE COURT: Because you might need to be questioned, as well, under the proceeding. All right?

02:49:17PM So I will set a date for that, and Mr. Vie can respond within that time frame, and then we will see whether or not there's a hearing probably within the next 30, 40 days.

MS. CURTIS: Okay.

THE COURT: Anything else?

02:49:36PM MS. CURTIS: No, Your honor.

THE COURT: And you are still not going to get a lawyer, right?

MS. CURTIS: Not quite yet.

THE COURT: Okay.

02:49:44PM Mr. Vie, did you have anything that you needed to bring to the Court's attention?

MR. VIE: No, Your Honor.

THE COURT: So I will go ahead and set this matter for a hearing perhaps the 1st of October.

02:49:55PM Do we have a date that we can give them now?

Is October 1st too soon?

You haven't had a chance to respond yet. So, theoretically, you have got 21 days.

MR. VIE: I think it is on the docket for the -- I

02:50:19PM think the submission date is the 19th.

THE COURT: That's an automatic submission. I'm talking about a date for the hearing on the motion. You are going to be responding or -- or not, one way or the other. I would have to have a hearing before I could decide the motion.

02:50:35PM MR. VIE: Tuesday, the 1st?

THE COURT: Would that be fine?

MS. CURTIS: Your Honor, the nature of my work requires me to be in my office on Monday or Tuesday of any given week.

02:50:49PM THE COURT: What's a good day for you?

MS. CURTIS: Wednesday, Thursday or Friday. Any Wednesday, Thursday or Friday I will be here.

THE COURT: So if you have to travel, how are you going to get here on Wednesday if you have got to be in there on Tuesday?

02:51:01PM

MS. CURTIS: I can travel at night.

THE COURT: You can work that out.

MS. CURTIS: I will work that out.

THE COURT: So let's pick a Wednesday. October 2nd, how is that for you?

MR. VIE: No objection, Your Honor.

THE COURT: October 2nd. Is 11:30 a good time or is it better in the afternoon, Ms. Curtis?

MS. CURTIS: 11:30 is fine.

02:51:24PM

THE COURT: Is that fine with you, then, Mr. Vie?

MR. VIE: Yes, Your Honor.

THE COURT: 10/11, at 11:30 a.m. -- 10/2. 10/11 must be a holiday. 10/2. I apologize. October 2nd.

We are not going to send out an additional -- well, we might send a notice out, but don't wait on us to send you a notice. You might get a notice indicating that -- a reminder that this is occurring, and that would be the nature and extent of the -- so let me ask a couple of questions, Mr. Vie. And, I'm not sure, you might confer with your client there.

02:51:48PM

02:52:11PM

I just signed an order, and you know that is a fairly expensive -- I will deal with your order. I need to sign it.

Can we pull up his order on the motion for the lease?

02:52:21PM

I want to make sure that the funds are available to pay the attorney and the accountant before -- I don't want hear him call me and say, Judge, I haven't seen or heard anything.

02:52:37PM MR. VIE: They are available, Your Honor.

THE COURT: All right. Very good. I believe everything else that was requested for payment, the taxes, that's been taken care of.

MR. VIE: Yes, Your Honor.

02:52:47PM THE COURT: The only thing I need is your order here.

The Court has entered an order on that. I believe that's all that I have. Thank you very much, ladies and gentlemen.

02:53:35PM (Concluded.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause, to the best of my ability.

//s_____ 09/27/2013
Stephanie Kay Carlisle CSR, RPR Date

Official Court Reporter

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$216,600,000 [1] - 21:15
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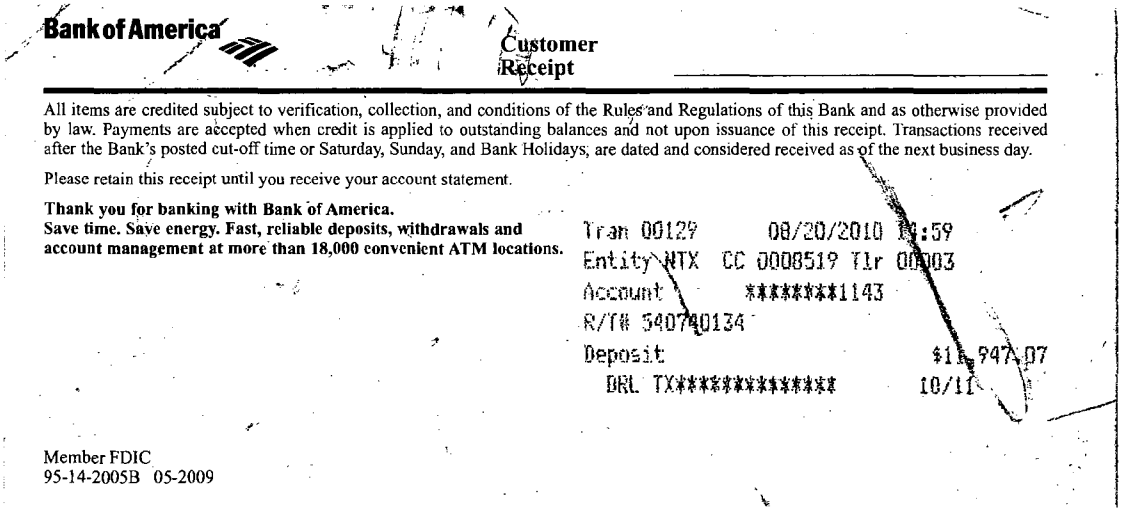
Exhibit 19

Bates stamped exhibits of EE bonds from Defendants April 9, 2013 disclosure CD delivered to Plaintiff in open court



Bank of America

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.
Save time. Save energy. Fast, reliable deposits, withdrawals and account management at more than 18,000 convenient ATM locations.

Tran 00129 08/20/2010 [illegible]:59
Entity NTX CC 0008519 Tlr 00003
Account ********1143
R/T# 340740134
Deposit $1,947.07
DRL TX********** 10/11

Member FDIC
95-14-2005B 05-2009

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
25	EE	200.00	1982 / 02	553.68	453.68
26	EE	200.00	1982 / 12	507.84	407.84
27	EE	200.00	1982 / 11	507.84	407.84
28	EE	200.00	1982 / 10	532.16	432.16
29	EE	200.00	1982 / 09	532.16	432.16
30	EE	200.00	1982 / 08	542.80	442.80
31	EE	200.00	1982 / 07	542.80	442.80
32	EE	200.00	1982 / 06	542.80	442.80
33	EE	200.00	1982 / 05	542.80	442.80
34	EE	200.00	1982 / 04	542.80	442.80
35	EE	200.00	1982 / 03	542.80	442.80
36	EE	50.00	1982 / 02	138.42	113.42

Sub/Totals

Pre-January 1990 Issue Dates	11947.07	9722.07
January 1990 and Later Issue Dates		
Total	11947.07	9722.07

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: 1080719A-Y 14:56 08/20/2010

P4914

17-20360.1220

BRUNSTING000471

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
1	EE	50.00	1982 / 09	133.04	108.04
2	EE	75.00	1982 / 12	190.44	152.94
3	EE	75.00	1982 / 11	190.44	152.94
4	EE	75.00	1982 / 10	199.56	162.06
5	EE	75.00	1982 / 08	203.55	166.05
6	EE	75.00	1982 / 07	203.55	166.05
7	EE	75.00	1982 / 06	203.55	166.05
8	EE	75.00	1982 / 05	203.55	166.05
9	EE	75.00	1982 / 04	203.55	166.05
10	EE	75.00	1982 / 03	203.55	166.05
11	EE	75.00	1982 / 01	207.63	170.13
12	EE	100.00	1982 / 03	271.40	221.40

Sub/Totals

Pre-January 1990 Issue Dates	11947.07	9722.07
January 1990 and Later Issue Dates		
Total	11947.07	9722.07

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: 1080719A-Y 14:56 08/20/2010

P4915

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
13	EE	100.00	1982 / 04	271.40	221.40
14	EE	100.00	1982 / 05	271.40	221.40
15	EE	100.00	1982 / 06	271.40	221.40
16	EE	100.00	1982 / 07	271.40	221.40
17	EE	100.00	1982 / 08	271.40	221.40
18	EE	100.00	1982 / 09	266.08	216.08
19	EE	100.00	1982 / 10	266.08	216.08
20	EE	100.00	1982 / 11	253.92	203.92
21	EE	100.00	1982 / 12	253.92	203.92
22	EE	100.00	1982 / 01	276.84	226.84
23	EE	100.00	1982 / 02	276.84	226.84
24	EE	200.00	1982 / 01	553.68	453.68

Sub/Totals

Pre-January 1990 Issue Dates	11947.07	9722.07
January 1990 and Later Issue Dates		
Total	11947.07	9722.07

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: 1080719A-Y 14:56 08/20/2010

P4916

17-20360.1222

BRUNSTING000473

385

17-20360.1223
BRUNSTING000950

TERM	LOC.	EMPL. NO.	NAME	BONDS	UNITS
1968	800	114162	E. H. BRUNSTING	22	58

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

67 TERM

LOC.	EMPLOYEE NO.	NAME	BONDS	UNITS
800	114,162	E. H. BRUNSTING	20	56

Cashed 6/11/76

TERM	LOC.	EMPL. NO.	NAME	BONDS	UNITS
1969	800	114162	E. H. BRUNSTING	24	67

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS

TERM	LOC.	EMPL. NO.	NAME	BONDS	UNITS
1970	800	114162	E. H. BRUNSTING	24	70

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

TERM	LOC.	EMPL. NO.	NAME	BONDS	UNITS
,1971	800	114162	E. H. BRUNSTING	24	78

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

Bank of America

USA

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.
Try Online Banking at www.bankofamerica.com

Tran 00040D 08/27/2008 11:35
Entity NTX CC 0008519 Tlr 00010
Account ********1143
R/T# 540740134
Deposit $4,448.04
N DRL TX******** 10/11

95-14-2005B 08-2004

P4923

17-20360.1229

BRUNSTING000956

Toll free number for Federal Reserve Bank in K.C. - 1-800-333-2919.

United States Savings Bonds on hand:-

Series E - 1977 - all months - Expire 2007 Cashed In 2/27/07
$25-100-200 denomination

Series EE - 1978 - January - one $100 Cashed in May. 4, 2008
one $200 - Expire 2008

Series HH - 1988 - Nov. only $1000 - 2 bonds - Expire 2008

8/27/08- **Series EE - 1981-From February to Dec. Expire 2011** - 15 bonds '81 cashed
All denominations total #448-04

Series EE - 1982 - all months - up to $200 - Expire 2012

Series EE - 1983 -January through July - Expire - 2013

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
1	EE	200.00	1981 / 07	521.76	421.76
2	EE	100.00	1981 / 07	260.88	210.88
3	EE	200.00	1981 / 06	521.76	421.76
4	EE	50.00	1981 / 07	130.44	105.44
5	EE	75.00	1981 / 03	204.36	166.86
6	EE	75.00	1981 / 06	195.66	158.16
7	EE	50.00	1981 / 03	136.24	111.24
8	EE	200.00	1981 / 03	544.96	444.96
9	EE	50.00	1981 / 04	136.24	111.24
10	EE	100.00	1981 / 04	272.48	222.48
11	EE	200.00	1981 / 04	544.96	444.96
12	EE	50.00	1981 / 05	130.44	105.44

Sub/Totals

Pre-January 1990 Issue Dates	4448.04	3610.54
January 1990 and Later Issue Dates		
Total	4448.04	3610.54

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: VFR0528B-Y 11:34 08/27/2008

P4925

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
4	EE	50.00	1981 / 07	130.44	105.44
5	EE	75.00	1981 / 03	204.36	166.86
6	EE	75.00	1981 / 06	195.66	158.16
7	EE	50.00	1981 / 03	136.24	111.24
8	EE	200.00	1981 / 03	544.96	444.96
9	EE	50.00	1981 / 04	136.24	111.24
10	EE	100.00	1981 / 04	272.48	222.48
11	EE	200.00	1981 / 04	544.96	444.96
12	EE	50.00	1981 / 05	130.44	105.44
13	EE	75.00	1981 / 05	195.66	158.16
14	EE	200.00	1981 / 05	521.76	421.76
15	EE	50.00	1981 / 06	130.44	105.44

Sub/Totals

Pre-January 1990 Issue Dates	4448.04	3610.54
January 1990 and Later Issue Dates		
Total	4448.04	3610.54

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

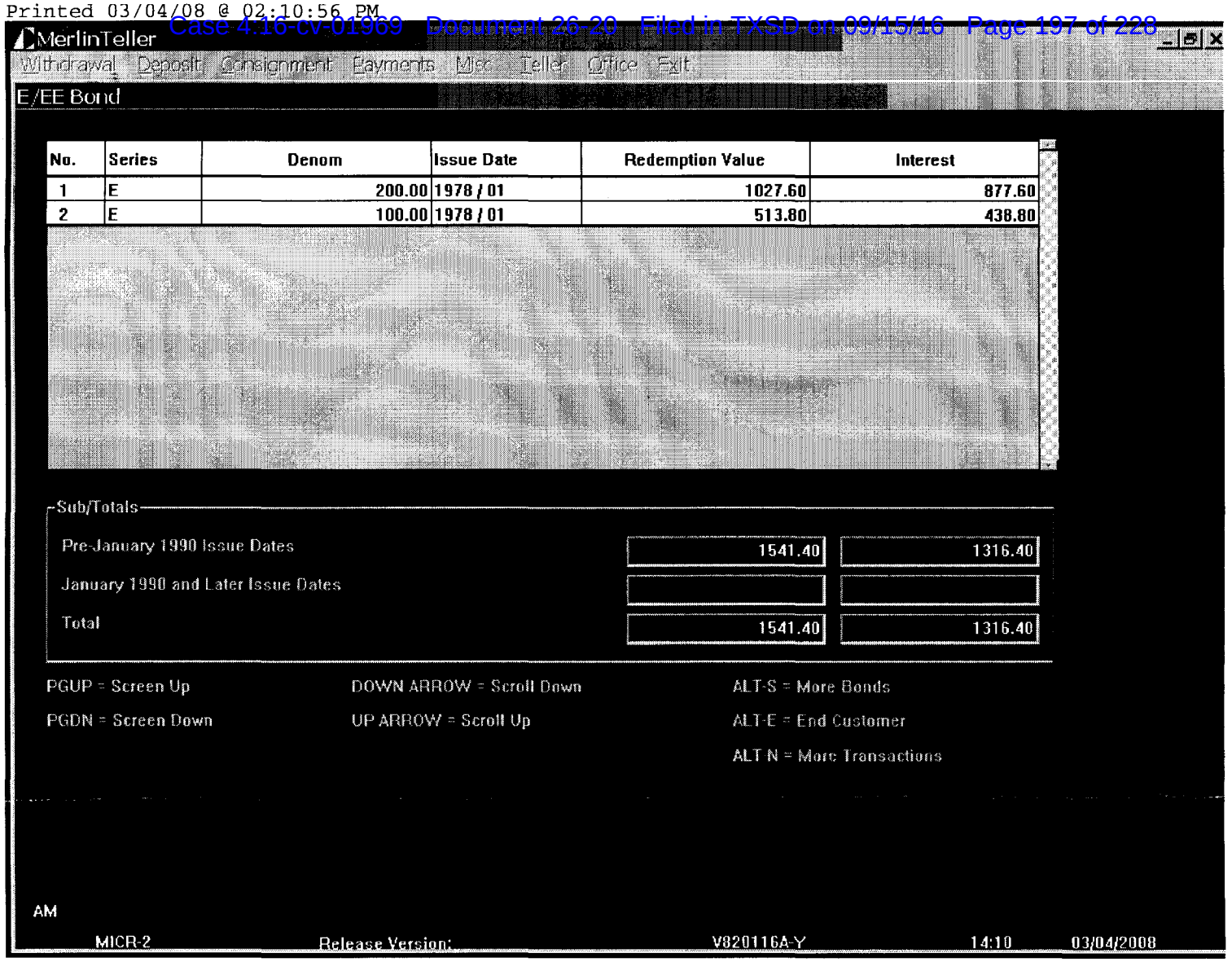
AM

MICR-2 Release Version: VFR0520B-Y 11:34 08/27/2008

P4926

17-20360.1232

BRUNSTING000959


MerlinTeller
Withdrawal Deposit Consignment Payments Misc Teller Office Exit
E/EE Bond
No. Series Denom Issue Date Redemption Value Interest
1 E 200.00 1978 / 01 1027.60 877.60
2 E 100.00 1978 / 01 513.80 438.80
Sub/Totals
Pre-January 1990 Issue Dates 1541.40 1316.40
January 1990 and Later Issue Dates
Total 1541.40 1316.40
PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT N = More Transactions
AM
MICR-2
Release Version:
V820116A-Y
14:10
03/04/2008

Printed 02/27/07 @ 10:45:14 AM

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
1	E	25.00	1977 / 12	123.46	104.71
2	E	25.00	1977 / 08	136.93	118.18
3	E	25.00	1977 / 05	136.67	117.92
4	E	100.00	1977 / 04	541.32	466.32
5	E	100.00	1977 / 05	546.68	471.68
6	E	100.00	1977 / 08	547.72	472.72
7	E	100.00	1977 / 06	547.84	472.84
8	E	100.00	1977 / 07	547.72	472.72

-Sub/Totals-

Pre-January 1990 Issue Dates	19708.78	16952.53
January 1990 and Later Issue Dates		
Total	19708.78	16952.53

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: V720129A-Y 10:45 02/27/2007

Printed 02/27/07 @ 10:45:26 AM

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
8	E	100.00	1977 / 07	547.72	472.72
9	E	100.00	1977 / 09	537.00	462.00
10	E	100.00	1977 / 10	537.00	462.00
11	E	100.00	1977 / 11	492.48	417.48
12	E	100.00	1977 / 12	493.84	418.84
13	E	100.00	1977 / 01	552.16	477.16
14	E	100.00	1977 / 02	552.16	477.16
15	E	100.00	1977 / 03	541.32	466.32

-Sub/Totals-

Pre-January 1990 Issue Dates	19708.78	16952.53
January 1990 and Later Issue Dates		
Total	19708.78	16952.53

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: V720129A-Y 10:45 02/27/2007

P4929

17-20360.1235

BRUNSTING000962

Printed 02/27/07 @ 10:46:25 AM

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
14	E ✓	100.00	1977 / 02	552.16	477.16
15	E ✓	100.00	1977 / 03	541.32	466.32
16	E	200.00	1977 / 11	984.96	834.96
17	E	200.00	1977 / 01	1104.32	954.32
18	E	200.00	1977 / 02	1104.32	954.32
19	E	200.00	1977 / 03	1082.64	932.64
20	E	200.00	1977 / 04	1082.64	932.64
21	E	200.00	1977 / 05	1093.36	943.36

Sub/Totals

Pre-January 1990 Issue Dates	19708.78	16952.53
January 1990 and Later Issue Dates		
Total	19708.78	16952.53

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR 2 Release Version: V720129A Y 10:45 02/27/2007

Printed 02/27/07 @ 10:46:35 AM

MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office Exit

E/EE Bond

No.	Series	Denom	Issue Date	Redemption Value	Interest
20	E ✔	200.00	1977 / 04	1082.64	932.64
21	E ✔	200.00	1977 / 05	1093.36	943.36
22	E	200.00	1977 / 06	1095.68	945.68
23	E	200.00	1977 / 07	1095.44	945.44
24	E	200.00	1977 / 09	1074.00	924.00
25	E	200.00	1977 / 12	987.68	837.68
26	E	200.00	1977 / 08	1095.44	945.44
27	E	200.00	1977 / 10	1074.00	924.00

-Sub/Totals-

Pre-January 1990 Issue Dates	19708.78	16952.53
January 1990 and Later Issue Dates		
Total	19708.78	16952.53

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: V720129A-Y 10:45 02/27/2007

NOTICE TO RECIPIENTS OF SERIES HH AND H BOND INTEREST
IMPORTANT TAX RETURN DOCUMENT ENCLOSED

On and after March 1, 1987, if a Series HH or H savings bond submitted for redemption is received by a Federal Reserve Office or the Bureau of the Public Debt in the month preceding an interest due date, the bond will be paid and the owner will not receive the upcoming interest payment, unless the paying office receives from the owner a specific written statement that the bond should be held until the month in which the interest is due. For example, if interest is due on a Series HH or H bond every January 1 and July 1 and the paying office receives the bond in June without a written request to hold the bond until July 1, the bond will be paid and the owner will receive no interest for the period from the preceding January 1 to the date of payment.

Paying offices will not honor instructions to hold bonds for later redemption if the bonds and written statement are received more than one month before an interest due date. For example, if interest is due on a Series HH or H bond every January 1 and July 1 and the bond is received by the paying office in September, the bond will be paid, and the owner will receive no interest for the period from the preceding July to the date of payment.

PLEASE RETAIN THIS NOTICE WITH YOUR BONDS AS A REMINDER OF THIS RULE CHANGE.

P4932

Bank of America

U.S. Savings Bond E/EE
Interest Income

Interest Income to be Reported to the Internal Revenue Service (Form must be typed or printed legibly)

Customer Information (Customer Mailing Address for 1099 Statement)

Customer Name (Name of party receiving funds)	Tax ID (TIN)
Elmer Brunsting	282-32-8905
Street Address/Apt. Number	City/State/Zip Code

I certify that the TIN shown on this form is my correct Taxpayer Identification Number for reporting to the IRS.

Customer Signature X Elmer H Brunsting Date 6/7/00

Associate Information

Prepared By	Teller Number	Telephone Number
Sally Richardson	159-006	(713) 365-3220
Bank Number/Cost Center	**Banking Center Name/ Number**	
Town & Country 159 000851	Town & Country	

Transaction Information (Complete all applicable fields)

Type of Bonds (Check applicable type)	Redemption Date	Number of Bonds
☒ Series E ☐ Series EE	6/7/00	24
Purchase Price (A)	**Interest Amount paid (B) (Amount reported to the IRS as Interest Income)**	**Total Amount Paid (C) (A + B = C)**
$ 1706.25	$ 8740.49	$ 10,446.74
Deposit to Account Number	**Total Deposit Amount**	
8519001143	$ 10,446.74	
Cash Ticket Number	**Cashier's Check Number**	

TEFRA Use Only

Entered By	Date	Delete	Date
Verified By	Date	Re-entered	Date

00-14-2944 NSB (01-1999) White - TEFRA Canary - Customer Pink - File

P4933

17-20360.1239

BRUNSTING000966

BOND INFORMATION

PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2000/06 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 = I BONDS

# OF BONDS	SERIES 1,2,3,4	FACE VALUE	ISSUE YYYY/MO	PER BOND REDEMP. VAL	PER BOND INT EARNED	TOTALS REDEMP. VAL	TOTALS INT EARNED
1	1	100	1973/12	447.40	372.40	447.40	372.40
1	1	100	1973/05	458.32	383.32	458.32	383.32
1	1	100	1973/06	459.40	384.40	459.40	384.40
1	1	100	1973/07	463.84	388.84	463.84	388.84
1	1	100	1973/07	463.84	388.84	463.84	388.84
1	1	100	1973/08	464.84	389.84	464.84	389.84
1	1	100	1973/09	455.80	380.80	455.80	380.80
1	1	100	1973/09	455.80	380.80	455.80	380.80
1	1	100	1973/10	455.80	380.80	455.80	380.80
1	1	100	1973/11	455.80	380.80	455.80	380.80
1	1	100	1973/11	455.80	380.80	455.80	380.80
1	1	100	1973/12	447.40	372.40	447.40	372.40
1	1	75	1973/02	350.61	294.36	350.61	294.36
			PAGE TOTAL			5834.65	4878.40

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

BOND INFORMATION

PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2000/06 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 = I BONDS

# OF BONDS	SERIES 1,2,3,4	FACE VALUE	ISSUE YYYY/MO	PER BOND REDEMP. VAL	PER BOND INT EARNED	TOTALS REDEMP. VAL	TOTALS INT EARNED
1	1	75	1973/04	343.74	287.49	343.74	287.49
1	1	75	1973/06	344.55	288.30	344.55	288.30
1	1	75	1973/08	348.63	292.38	348.63	292.38
1	1	75	1973/10	341.85	285.60	341.85	285.60
1	1	100	1973/01	466.28	391.28	466.28	391.28
1	1	100	1973/01	466.28	391.28	466.28	391.28
1	1	100	1973/02	467.48	392.48	467.48	392.48
1	1	100	1973/03	458.32	383.32	458.32	383.32
1	1	100	1973/03	458.32	383.32	458.32	383.32
1	1	100	1973/04	458.32	383.32	458.32	383.32
1	1	100	1973/05	458.32	383.32	458.32	383.32
			PAGE TOTAL			4612.09	3862.09

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

Barclays Am
Town & Country
Branch require
for sale of all our
1973 Series E Bonds
6/7/00

Total # 8740.49 int.

Total # 10446.74 redemption value

P4934

17-20360.1240

GA-268 Rev. 1-74 **GENERAL ATOMIC COMPANY**

CALCULATIONS FOR 1973 SERIES E BONDS

EQUIP. NO.	PROJ. NO.	CALC. NO.	PAGE OF
PREPARED BY	DATE	REF. DOCUMENTS: FIGURED FOR JUNE REDEMPTION	
REVIEWED BY	DATE		
APPROVED BY	DATE		

ISSUE DATE	DENOM.	SERIAL #	TOTAL VALUE	COST	INT. EARNED	
JAN 1973	100	C-21165812646E	466.28	75	391.28	
JAN 1973	100	C-21165812656E	466.28	75	391.28	
FEB 1973	100	C-21165812666E	466.28	75	391.28	392.48
FEB 1973	75	K 22303622206E	350.61	56.25	294.36	
MAR 1973	100	C 21165812676E	458.32	75	383.32	
MAR 1973	100	C 21165812686E	458.32	75	383.32	
APR 1973	100	C 21165812716E	458.32	75	383.32	
APR 1973	75	K 22303621966E	343.74	56.25	287.49	
MAY 1973	100	C 21165812696E	458.32	75	383.32	
MAY 1973	100	C 21165812706E	458.32	75	383.32	
JUNE 1973	100	C 21165812726E	459.40	75	384.40	
JUNE 1973	75	K 22303621866E	344.55	56.25	288.30	
JULY 1973	100	C 21165812736E	463.84	75	388.84	
JULY 1973	100	C 21165812746E	463.84	75	388.84	
AUG 1973	100	C 21165812756E	463.84	75	388.84	
AUG 1973	75	K 22303621666E	348.63	56.25	292.38	
SEPT 1973	100	C 21165812746E	455.80	75	380.80	
SEPT 1973	100	C 21165812776E	455.80	75	380.80	
OCT 1973	100	C 21165812786E	455.80	75	380.80	
OCT 1973	75	K 22303621766E	341.85	56.25	285.60	
NOV 1973	100	C 21165812796E	455.80	75	380.80	
NOV 1973	100	C 21165812806E	455.80	75	380.80	
DEC 1973	100	C 21165812816E	447.40	75	372.40	
DEC 1973	100	C 21165812826E	447.40	75	372.40	
			1106.25		8,685.29	

BANK TOTAL 10,446.74
+ 55.20

GRAND TOTAL 10,446.74
DIVIDEND 1706.25
8740.49
INTEREST X.28
2447.34
2250.00
197.34

Aug 3,250 = 91.88
3250
5500

467.44

P4935

17-20360.1241

BRUNSTING000968

GA 268 Rev. 1-74

GENERAL ATOMIC COMPANY

CALCULATIONS FOR			
EQUIP. NO.	PROJ. NO.	CALC. NO.	PAGE OF
PREPARED BY	DATE	REF. DOCUMENTS:	
REVIEWED BY	DATE		
APPROVED BY	DATE		

P4936

December Redemption

		1 Denomination	2 Redemp Value	3 Paid in	4 Payable	5	6	7 Denom	8 Redemp Value	9 Paid in	10 Payable	11	12 Principle	13 Int.
1	Sept 1968	25	128.93	18.75	110.18		Oct	50	246.44	37.50	208.72	1968	3755	2485.60
2		100	515.72	75	440.72			100	492.88	75	417.44	1969	80625	455864
3	Oct	25	128.93	18.75	110.18		Nov.	50	246.44	37.50	208.72	1970	118125	5058.24
4		100	515.72	75	440.72			100	492.88	75	417.44		236250	12183.52
5	Nov.	25	127.93	18.75	109.18		Dec	50	246.44	37.50	208.72	1971	144337	6693.14
6		100	511.72	75	436.72			100	492.88	75	417.44		380625	19876.63
7	Dec	100	511.72	75	436.72					1181.25	5079.26	1980	70250	1849.51
8		25	129.93	18.75	111.18								450875	21726.44
9				375	2415.60		Jan 71	50	211.50	37.50	174.00	1972	145125	6874.74
10								100	423.00	75	348.00		999000	28321.18
11	April 1969	25	129.35	18.75	110.06		Feb	50	211.50	37.50	174.44			
12		100	517.4	75	442.40			100	423.92	75	348.92			
13	May	50	255.08	37.50	217.58		March	50	211.96	37.50	174.46			
14		100	510.14	75	435.16			100	423.92	75	348.92			
15	June	50	249.78	37.50	212.28		April	50	211.96	37.50	174.46			
16		100	499.56	75	424.56			100	423.92	75	348.92			
17	Aug.	100	495.68	75	420.68		May	75	317.94	56.25	261.69			
18	Sept	50	247.84	37.50	210.34			100	423.92	75	348.92			
19		100	495.68	75	420.68		June	75	317.94	56.25	261.69			
20	Oct	25	123.92	18.75	105.17			100	423.92	75	348.92		Bonds	14880
21		100	495.68	75	420.68		July	50	211.50	37.50	173.00		Savings	8610
22	Nov	50	247.84	37.50	210.34			100	423.92	75	346.00			23490
23		100	495.68	75	420.68		Aug	75	316.32	56.25	260.07			
24	Dec	25	124.92	18.75	105.81			100	421.76	75	346.76			
25		100	498.28	75	423.34		Sept	50	210.88	37.50	173.38			
26				806.25	4588.68			100	421.76	75	346.76			
27							Oct	75	316.32	56.25	260.07		Sold THRU	1977
28	March 70	50	247.18	37.50	209.68			100	421.76	75	346.76		Expired	3504
29		100	494.36	75	419.36		Nov	50	210.88	37.50	173.38		Sent	19877
30	April	50	247.18	37.50	209.68			100	421.76	75	346.76			23653
31		100	494.36	75	419.36		Dec	75	317.13	56.25	260.88			
32	May	50	247.18	37.50	209.68		(10)	100	422.84	75	346.84		Tax 1977	5565
33		100	494.36	75	419.36					448.75	1693.11			18,118
34	June	50	248.34	37.50	210.84									8610
35		100	496.68	75	421.68									27128
36	Aug.	50	246.44	37.50	208.94									
37		100	492.88	75	417.88									23720
38	Sept	25	123.22	18.75	104.72									
39		100	492.88	75	418.88									
40				843.75	3,248.38									
41														
42														

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Decatur Redemption

1977

	Denomination	redemption value	Paid in	Taxable
Feb 1980	75	202.29	56.25	146.04
Feb	100	269.72	75	194.72
Feb	200	539.43	150	389.43
March	200	539.47	150	389.43
March	200	539.47	150	389.43
April	75	202.29	56.25	146.04
April	100	269.72	75	194.72
	875		702.50	1849.81

77

Jan	75	310.86	56.25	254.61
Feb	50	207.24	37.50	169.74
Feb	100	415.48	75	340.48
March	75	311.61	56.25	255.36
March	100	415.48	75	340.48
April	75	311.61	56.25	255.36
April	100	415.48	75	340.48
May	75	311.61	56.25	255.36
May	100	415.48	75	340.48
June	75	312.48	56.25	256.23
June	100	416.64	75	341.64
July	75	306.33	56.25	250.08
July	100	408.44	75	333.44
Aug	75	307.02	56.25	250.77
Aug	100	408.44	75	333.44
Sept	75	307.02	56.25	250.77
Sept	100	408.44	75	333.44
Oct	75	307.02	56.25	250.77
Oct	100	408.44	75	333.44
Nov	75	307.02	56.25	250.77
Nov	100	408.44	75	333.44
Dec	75	307.68	56.25	251.43
Dec	100	410.24	75	335.24
			481.25	6554.78
			3990	28321.18

1849.81
702.50
2552.31

123.92
11.64
403.75
5029
125

28321.18
25886.87
2434.31
2352.31
82.00

25886.87
2562.34
28449.21
25.00
28424.21
3990
24434.21

34424.08
-3
30014.08

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BRUNSTING000971

17-20360.1244

SAVINGS - STOCK BONUS PLAN OF
GULF OIL CORPORATION

EMPLOYEE NO: 114162
LOCATION NO: 150
SOC SEC NO: 282-32-8905

AUTHORIZATION FOR SETTLEMENT

IN ACCORDANCE WITH THE PROVISIONS OF THE SAVINGS-STOCK BONUS PLAN, THE SETTLEMENT SHOWN BELOW IS AUTHORIZED TO BE MADE FOR THE ACCOUNT OF E.H. BRUNSTING BY REASON OF REQUEST 12/31/82
PART OF THIS SETTLEMENT MAY BE TAXABLE.

			COST OF SECURITIES	CASH PAYMENT	TOTAL FUND SETTLEMENT
SAVINGS FUNDS:					
1982 TERM-	36 BONDS	178 UNITS	2,225.00	4.84	2,229.84
STOCK BONUS FUNDS:					
LONG TERM-	SHARES @	$.000			
LONG TERM SAVINGS FUNDS:					
OPTION 1-	SHARES @	$.000			
OPTION 2					
SAVERS A-	SHARES @	$.000			
SAVERS B					
TOTAL SETTLEMENT UNDER ALL FUNDS:					
36 BONDS	SHARES		2,225.00	4.84	2,229.84

CHECK DATE 03/25/83 , NUMBER 214850, PAYEE E. H. BRUNSTING

BENEFITS COMMITTEE

DATE MARCH 25, 1983

BY PHILIP E. LINTNER
SECRETARY

FLASH 5013

P4939

17-20360.1245

BRUNSTING000972

1-800 333 2919

DESCRIPTIONS OF UNITED STATES SAVINGS BONDS PRESENTED AND SURRENDERED

ISSUE DATE	DENOMINATION	SERIAL NUMBER	INSCRIPTION
~~JAN 1968~~	123.71 25	Q2323610188E	ELMER H. BRUNSTING OR Q641817019E NELVA E. BRUNSTING
~~JAN 1968~~	494.84 100	C488366018E	DITTO C-2116581318E
~~FEB 1968~~	494.84 100	C488381553E	DITTO C-2116581319E
~~MARCH 1968~~	494.84 100	C487597606E	DITTO C 2116581320E
~~JULY 1968~~	495.84 100	C492930507E	DITTO Sold — more?
~~AUG 1968~~	123.92 25	Q2369597957E	DITTO Q641811701 8E
~~AUG 1968~~	495.68 100	C495526689E	DITTO C-2116581371
~~SEPT 1968~~	123.92 25	Q2376239798E	DITTO Q641817017E
~~SEPT 1968~~	495.68 100	C495554472E	DITTO C2116581316E
~~OCT 1968~~	123.92 25	Q2376412853E	DITTO Q641811701 6E
~~OCT 1968~~	495.68 100	C495571546E	DITTO C-2116581315E
~~NOV 1968~~	123.92 25	Q2382934338E	DITTO Q641817015E
~~NOV 1968~~	495.68 100	C496529219E	DITTO C-2116581314E
~~DEC 1968~~	495.68 100	C496545465E	DITTO C-2116581313E
~~DEC 1968~~	124.34 25	Q2389590020E	DITTO Q641817020E
	5176.72		
~~JAN 1969~~	124.33 25	Q2402769422E	ELMER H BRUNSTING Q641817202 1E NELVA E BRUNSTING
~~JAN 1969~~	497.32 100	C497448486E	DITTO Sold
~~FEB 1969~~	124.33 25	Q2409958642E	DITTO Q641817202 2E
~~FEB 1969~~	497.32 100	C499254901E	DITTO C-2116581323E
~~MARCH 1969~~	248.66 50	L757031560E	DITTO L-222513 1 884E
~~MARCH 1969~~	497.32 100	C499266790E	DITTO C2116581324E
~~APRIL 1969~~	124.33 25	Q2422715395E	DITTO Q641817202 3E
APRIL 1969	497.32 100	C499274128E	DITTO C.2116581325E
~~MAY 1969~~	246.66 50	L763056023E	DITTO L-2225 13188 5E
MAY 1969	492.28 100	C5022244708E	DITTO C-2116581326E
JUNE 1969	240.00 50	L766519117E	DITTO L-222513188 6E
JUNE 1969	460.16 100	C502238466E	DITTO C 2116581327E
~~JULY 1969~~	115.83 25	Q2440232983E	DITTO Q-641817202 4E
~~JULY 1969~~	475.32 100	C502260677E	DITTO Sold
~~AUG 1969~~	238.18 50	L772779399E	DITTO L 222513188 8E
AUG 1969	476.36 100	C504859197E	DITTO C-2116581221E
~~SEPT 1969~~	238.20 50	L775389203E	DITTO L-2225 13188 1E
SEPT 1969	476.40 100	C504883348E	DITTO C-2116581329E
~~OCT 1969~~	119.25 25	Q2468249697E	DITTO Q641817202 2E
OCT 1969	476.40 100	C506399101E	DITTO C-2116581330E
~~NOV 1969~~	238.20 50	L777324452E	DITTO L 222513188 2E
NOV 1969	476.40 100	C506442126E	DITTO C2116581331E
~~DEC 1969~~	119.25 25	Q2476363422E	DITTO Q641817202 5E
DEC 1969	476.88 100	C506449027E	DITTO C-2116581308E
	7601.58		
~~JAN 1970~~	236.96 50	L779356396E	ELMER H BRUNSTING OR 222513188 3E NELVA E BRUNSTING
~~JAN 1970~~	473.92 100	C507351868E	DITTO C-2116581309E
~~FEB 1970~~	118.48 25	Q2489045403E	DITTO Q641817202 6E
FEB 1970	473.92 100	C507371517E	DITTO C-2116581234E
~~MARCH 1970~~	237.56 50	L781533895E	DITTO L-222513188 5E

~~7/3/97 C 1972 100~~ C 2116581302E

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MARCH 1970	237.58	100		C509742914E	DITTO C-211658131 0E
APRIL 1970	118.78	50		L781622843E	DITTO L-222513186 6E
APRIL 1970	475.12	100		C513299043E	DITTO C-211658131 1E
MAY 1970	237.56	50		LL781689413E	DITTO L-222513186 7E
MAY 1970	475.12	100		C513338157E	DITTO C-211658131 2E
JUNE 1970	237.58	50		L781840738E	DITTO L-222513186 8E
JUNE 1970	475.16	100		C513377785E	DITTO C-211658128 3E
9/23/97 JULY 1970	258.70	50		L794088310E	DITTO L-222513186 9E
9/23/97 JULY 1970	477.40	100		C513404100E	DITTO C-211658128 4E
AUG 1970	236.92	50	46	L796803115E	DITTO L-222513187 0E
AUG 1970	472.64	100		C 515732747E	DITTO C-211658128 5E
SEPT 1970	118.44	25		Q2528750393E	DITTO Q641817202 7E
SEPT 1970	473.76	100		C515801272E	DITTO C-211658128 6E
OCT 1970	236.88	50		L801969302E	DITTO L-222513187 1E
OCT 1970	473.26	100		C515833390E	DITTO C-211658189 7E
NOV 1970	296.60	50		L802022535E	DITTO L-222513187 2E
NOV 1970	472.76	100		C515886588E	DITTO C-211658126 8E
DEC 1970	237.46	50		L807326463E	DITTO L-222513187 3E
DEC 1970	474.64	100		C 515436590E	DITTO C-211658128 9E
	7750.60				
JAN 1971	201.32	50		L807366168E	ELMER H BRUNSTING OR L222513187 4E
JAN 1971	402.64	100		C518450821E	NELVA BRUNSTING C-211658129 0E
FEB 1971	201.74	50		L812941238E	DITTO L-222513187 5E
FEB 1971	403.46	100		C518516321E	DITTO C-211658129 1E
MARCH 1971	201.74	50		L815611153E	DITTO L-222513187 6E
MARCH 1971	403.48	100		C522495921E	DITTO C-211658129 2E
APRIL 1971	201.74	50		L817774095E	DITTO L222513187 7E
APRIL 1971	403.46	100		C523365879E	DITTO C-211658129 3E
MAY 1971	302.61	75		K14200621E	DITTO K223036235E
MAY 1971	403.48	100		C523483834E	DITTO C-211658129 4E
JUNE 1971	297.63	75		K14670394E	DITTO K223036234E
JUNE 1971	394.84	100		C526107354E	DITTO C-211658129 5E
JULY 1971	198.72	50		L819574435E	DITTO L-222513187 8E
JULY 1971	397.52	100		C528427319E	DITTO C-211658129 6E
AUG 1971	258.17	75		K15016278E	DITTO K223036238E
AUG 1971	397.56	100		C529794380E	DITTO C-211658129 7E
SEPT 1971	198.78	50		L825480119E	DITTO L-222513187 9E
SEPT 1971	397.52	100		C529877212E	DITTO C-211658129 8E
OCT 1971	298.17	75		K15187296E	DITTO L-223036232E
OCT 1971	397.52	100		C529895593E	DITTO C-211658129 9E
NOV 1091	198.78	50		L835532053E	DITTO L-222513188 0E
NOV 1971	397.52	100		C531353752E	DITTO C 211658130 0E
DEC 1971	298.89	75		K16443059E	DITTO K223036231E
DEC 1971	396.56	100		C534218555E	DITTO C-211658130 1
	7698.52				
JAN 1972	293.04	75		K16841325E	ELMER H BRUNSTING OR K223036198E
7/3/97 JAN 1972	390.72	100		C 535345407E	NELVA E BRUNSTING SAME
FEB 1972	195.50	50		L1002342624E	DITTO L-222513185 7E
FEB 1972	391.60	100		C536246756E	DITTO C-211658130 3E

C-211658130 2E

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~~MARCH 1972~~	2 93 73	75	K100205529E	DITTO K-223036230E
~~MARCH 1972~~	391.64	100	C1001140610E	DITTO C-211658/1304E
~~APRIL 1972~~	293.7	75	K100235027E	DITTO K-223036229E
~~APRIL 1972~~	391.64	100	C1001188897E	DITTO C-211658/1305E
~~MAY 1972~~	293.73	75	K100574825E	DITTO K-223036228E
~~MAY 1972~~	391.64	100	C1004287178E	DITTO C-211658/1306E
~~JUNE 1972~~	294.54	75	K100897353E	DITTO K-223036227E
~~JUNE 1972~~	392.72	100	C1004370151E	DITTO C-211658/1307E
~~JULY 1972~~	288.75	75	K100923508E	DITTO K-223036226E
~~JULY 1972~~	385	100	C1005971762E	DITTO C-211658/1258E
~~AUG 1972~~	289.41	75	K101226740E	DITTO K-223036225E
~~AUG 1972~~	385.88	100	C1007854435E	DITTO C-211658/1259E
~~SEPT 1972~~	289.41	75	K101234776E	DITTO K-223036224E
~~SEPT 1972~~	385.88	100	C1009583723E	DITTO C-211658/1260E
~~OCT 1972~~	289.41	75	K101497925E	DITTO K-223036223E
~~OCT 1972~~	385.88	100	C1013424162E	DITTO C-211658/1261E
~~NOV 1972~~	289.41	75	K101674271E	DITTO K-223036222E
NOV 1972	385.88	100	C1014677804E	DITTO C-211658/1262E
~~DEC 1972~~	350.01	75	K101717239E	DITTO K-223036221E
DEC 1972	388.68	100	C1014769185E	DITTO C-211658/1263E
	8071.13			

JAN 1973	379.04	100	C1017412539E	ELMER H BRUNSTING OR C-211658/1264E
JAN 1973	379.04	100	C1017412540E	NELVA E BRUNSTING C-211658/1265E
FEB 1973	284	75	K103456625E	DITTO K-223036220E
FEB 9173	380	100	C1019165387E	DITTO C-211658/1266E
MARCH 1973	380	100	C1020967659E	DITTO C-211658/1267E
MARCH 1973	380	100	C1020967660E	DITTO C-211658/1268E
APRIL 1973	265	75	K103502429E	DITTO K-223036219E
APRIL 1973	380	100	C1022725346E	DITTO C-211658/1271E
MAY 1973	380	100	C1022743153E	DITTO C-211658/1269E
MAY 1973	380	100	C1022743154E	DITTO C-211658/1270E
JUNE 9173	283.64	75	K104260431E	DITTO K-223036218E
JUNE 1973	380.88	100	C1024190568E	DITTO C-211658/1272E
JULY 1973	373.40	100	C1025207524E	DITTO C-211658/1273E
JULY 1973	373.40	100	C1025207525E	DITTO C-211658/1274E
AUG 1973	280.65	75	K104501960E	DITTO K-223036216E
AUG 1973	374.20	100	C1026856168E	DITTO C-211658/1275E
SEPT1973	374.87	100	C1028489865E	DITTO C-211658/1277E
SEPT 1973	374.87	100	C1028489866E	DITTO C-211658/1277E
OCT 1973	280.65	75	K105207666E	DITTO K-223036217
OCT 1973	374.20	100	C1030186694E	DITTO C-211658/1278E
NOV 1973	374.87	100	C1031889677E	DITTO C-211658/1279E
NOV 1973	374.87	100	C1031889678E	DITTO C-211658/1280E
DEC 1973	373.68	100	C1031993682E	DITTO C-211658/1281E
DEC 1973	373.68	100	C1031993683E	DITTO C-211658/1282E
	~~8555.51~~ 10,410.11			

~~JAN 1974~~	272.76	75	K105609333E	ELMER H BRUNSTING OR K-223036215E
~~JAN 1974~~	363.68	100	C1034862765E	NELVA E BRUNSTING C-211658/1234E
~~FEB 1974~~	272.76	75	K106301025E	DITTO K-223036214E

Ended 7/6/00

~~1/17/01~~ 4/4/02

436.36 - 351.36 Ded.

Mand Plan August 2000. 434/300 2500 x 4.34 = 10,850 for 1974

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~~FEB 1974~~	363.68	100	C1037551320E	DITTO
~~MARCH 1974~~	363.68	100	C1039590046E	DITTO
~~MARCH 1974~~	363.68	100	C1039590047E	DITTO
~~APRIL 1974~~	363.68	100	C1039616578E	DITTO
~~APRIL 1974~~	363.68	100	C1039616579E	DITTO
~~MAY 1974~~	356.48	100	C1040575108E	DITTO
~~MAY 1974~~	356.48	100	C1040575109E	DITTO
~~JUNE 1974~~	357.32	100	C1040666253E	DITTO
~~JUNE 1974~~		100	C1040666254E	DITTO
~~JULY 1974~~	89.32	25	Q5206129943E	DITTO
~~JULY 1974~~	357.32	100	C1040699695E	DITTO
~~JULY 1974~~	357.32	100	C1040699696E	DITTO
~~AUG 1974~~	89.32	25	Q5207177764E	DITTO
~~AUG 1974~~	357.32	100	C1042675840E	DITTO
~~AUG 1974~~	357.32	100	C1042675841E	DITTO
~~SEPT 1974~~	89.32	25	Q5212656678E	DITTO
~~SEPT 1974~~	357.32	100	C1044277355E	DITTO
~~SEPT 1974~~	357.32	100	C1044277356E	DITTO
~~OCT 1974~~	89.32	25	Q5219890347E	DITTO
~~OCT 1974~~	714.64	200	R104236199E	DITTO
~~NOV 1974~~	87.56	25	Q5227328461E	DITTO
~~NOV 1974~~	700.48	200	R104238066E	DITTO
~~DEC 1974~~	702.16	200	R105532207E	DITTO
	5.861.23			

JAN 1975	702.08	200	R105534602E	ELMER H BRUNSTING OR	R-2143707611E
FEB 1975	87.76	25	Q5250876813E	NELVA E BRUNSTING	Q6918172030E
FEB 1975	702.08	200	R105537285E	DITTO	R-2143707608E
MARCH 1975	175.52	50	L1110504385E	DITTO	L2225131858E
MARCH 1975	702.08	200	R105552232E	DITTO	R-2143707599E
APRIL 1975	175.52	50	L10655080468E	DITTO	L-2225131859E
APRIL 1975	702.08	200	R105555261E	DITTO	R-2143707588E
MAY 1975	172.04	50	L20046344533E	DITTO	L-2225131860E
MAY 1975	688.16	200	R200729202E	DITTO	R-2143707577E
JUNE 1975	86.23	25	Q6011260745E	DITTO	Q6418172031E
JUNE 1975	689.84	200	R200475099E	DITTO	R-2143707566E
JULY 1975	172.44	50	L2008122240E	DITTO	L-2225131861E
JULY 1975		200	R200478983E	DITTO	R-2143707555E
AUG 1975		50	L2011260401E	DITTO	L2225131862E
AUG 1975		200	R201130474E	DITTO	R-2143707544E
SEPT 1975	172.44	50	L2019145590E	DITTO	L-2225131863E
SEPT 1975	689.76	200	R201134203E	DITTO	R-2143707533E
OCT 1975	172.44	50	L2025225306E	DITTO	L-2225131864E
OCT 1975	689.76	200	R201145065E	DITTO	R-2143707522E
NOV 1975	258.54	75	K202269628E	DITTO	K223036213E
NOV 1975	676.24	200	R201438781E	DITTO	R-2143707744E
DEC 1975	254.16	75	K202852678E	DITTO	K223036212E
DEC 1975	677.76	200	R202448340E	DITTO	R-2143707733E

10,193,94

deposited 33,248.29

7,212,24 of which 6087,24 is taxable

17-20360.1249
BRUNSTING000976

JAN1976	254.1975	K202864265E	ELMER H BRUNSTING OR	K-223036211E
JAN 1976	677.84200	R202451895E	NELVA E BRUNSTING	R-214370772E
FEB 1976	254.1975	K203112916E	DITTO	K-223036210E
FEB 1976	677.84200	R202690829E	DITTO	R-214370771E
MARCH 1976	254.1975	K203265303E	DITTO	K-223036209E
MARCH 1976	677.84200	R202694335E	DITTO	R-214370770E
APRIL1976	254.1975	K203366117E	DITTO	K-223036208E
APRIL 1976	677.84200	R202698397E	DITTO	R-214370769E
MAY 1976	249.1275	K203354323E	DITTO	K-223036207E
MAY 1976	664.32200	R202699682E	DITTO	R-214370768E
JUNE 1976	249.6975	K203364078E	DITTO	K-223036206E
JUNE 1976	665.84200	R203951602E	DITTO	R-214370767E
JULY 1976	249.6675	K203386120E	DITTO	K-223036205E
JULY 1976	665.76200	R203944366E	DITTO	R-214370766E
AUG 1976	332.88100	C2030829953E	DITTO	C-2116581250E
AUG 1976	665.76200	R203949180E	DITTO	R-214370765E
SEPT 1976	249.6675	K207076144E	DITTO	K-223036204E
SEPT 1976	665.76200	R203978493E	DITTO	R-214370784E
OCT 1972	249.6675	K207094581E	DITTO	K-223036203E
OCT 1976	665.76200	R204483052E	DITTO	R-214370753E
NOV 1976	249.75	K207452453E	DITTO	K-223036202E
NOV 1976	665.76200	R204507335E	DITTO	R-214370782E
DEC 1976	249.6675	K207459456E	DITTO	K-223036201E
DEC 1976	665.76200	R204523975E	DITTO	R-214370781E
	11,099.16			
JAN 1977	327.24100	C20361322118E	ELMER H BRUSTING OR	C-2116581251E
JAN 1977	654.48200	R204541333E	NELVA E BRUNSTING	R-214370780E
FEB 1977	327.24100	C2039832289E	DITTO	C-2116581252E
FEB 1977	654.48200	R204553456E	DITTO	R-214370779E
MARCH 1977	327.24100	C2041431316E	DITTO	C-2116581253E
MARCH 1977	654.48200	R204557856E	DITTO	R-214370778E
APRIL 1977	327.24100	C2043336989E	DITTO	C-2116581254E
APRIL 1977	654.48200	R205675270E	DITTO	R-214370777E
MAY 1977	80.2125	Q6185728367E	DITTO	Q641817203ZE
MAY 1977	320.84100	C2046633576E	DITTO	C-2116581255E
MAY 1977	641.68200	R205991077E	DITTO	R-214370776E
JUNE 1977	321.84100	C2049536154E	DITTO	C-2116581256E
JUNE 1977	643.04200	R20634880E	DITTO	R214370775E
JULY 1977	321.44100	C204981455E	DITTO	C-2116581257E
JULY 1977	642.88200	R206596261E	DITTO	R214370794E
AUG.1977	80.3625	Q6204923639E	DITTO	Q641817203Y6
AUG 1977	321.44100	C2054099290E	DITTO	C-2116581226E
AUG 1977	642.88200	R2060846501E	DITTO	R-214370793E
SEPT 1977	321.44100	C2054145624E	DITTO	C-2116581227E
SEPT 1977	642.88200	R207208675E	DITTO	R214370792E
OCT 1977	321.44100	C2058634132E	DITTO	C-2116581228E
OCT 1977	642.88200	R207528154E	DITTO	R-214370791E
NOV 1977	256.20100	C2059773778E	DITTO	C-2116581229E
NOV 1977	512.40200	R207840791E	DITTO	R-214370790E
DEC 1977	71.7525	Q6233839753E	DITTO	Q641817203YE
DEC 1977	187.00100	C2061750948E	DITTO	C-2116581230E
	2/27/07 19,708.78			

DEC 1977		25	Q6233839753E	DITTO
DEC 1977		100	C2066750948E	DITTO
DEC 1977		200	R207846639E	DITTO R214370789E
JAN 1978	3/4/08	287 100	C2063616775E	ELMER H. BRUNSTING OR C-2116581231E
JAN 1978		574 200	R208068104E	NELVA E BRUNSTING R214370788E
~~FEB 1980~~		194.43 75	K221891597E	ELMER H BRUNSTING OR K2230821796E
~~FEB 1980~~		259.24 100	C2107430100E	NELVA E BRUNSTING C-2116581232E
~~FEB 1980~~		518.48 200	R212872691E	DITTO R-214370787E
~~MARCH 1980~~		518.48 200	R212956976E	DITTO R-214370786E
MARCH 1980		518.48 200	R212956977E	DITTO R 214370785E
~~APRIL 1980~~		194.43 75	K222388747E	DITTO K.223036200E
~~APRIL 1980~~		259.24 100	C2108816696E	DITTO C-2116581233E
		2462.78		
FEB 1981		161.40 50	L50420726EE	ELMER H BRUNSTING OR L550298074EE
FEB 1981		242.1 75	K19777823EE	NELVA E BRUNSTING K101747190EE
FEB 1981		645.60 200	R7766450EE	DITTO R137344640EE
MARCH 1981		161.40 50	L57948286EE	DITTO L550298073EE
MARCH 1981		242.1 75	K19824806EE	DITTO K101747189EE
MARCH 1981		645.60 200	R7862790EE	DITTO R137344693EE
APRIL 1981		161.40 50	L62652169EE	DITTO L550298072EE
APRIL 1981		322.80 100	C22831762EE	DITTO C586074555EE
APRIL 1981		645.60 200	R7935030EE	DITTO R137344638EE
MAY 1981		152.96 50	L66997209EE	DITTO L550298071EE
MAY 1981		229.44 75	K20201615EE	DITTO K101747188EE
MAY 1981		611.84 200	R8890396EE	DITTO R137344637EE
JUNE 1981		152.96 50	L67154411EE	DITTO L550298070EE
JUNE 1981		229.44 75	K20988705EE	DITTO K101747187EE
JUNE 1981		611.84 200	R8963741EE	DITTO R137344636EE
JULY 1981		152.96 50	L71018815EE	DITTO L550298069EE
JULY 1981		305.92 100	C27478706EE	DITTO C586074554EE
JULY 1981		611.84 200	R9080782EE	DITTO R137344635EE
AUG. 1981		152.96 50	L77515409EE	DITTO L550298068EE
AUG. 1981		229.44 75	K21069991EE	DITTO K101747186EE
AUG. 1981		611.84 200	R9163791EE	DITTO R-137344634EE
SEPT 1981		152.96 50	L78689195EE	DITTO L550298067EE
SEPT 1981		305.92 100	C31829104EE	DITTO C586074553EE
SEPT 1981		611.84 200	R299558EE	DITTO R137344633EE
OCT 1981		152.96 50	L83335953EE	DITTO L550298066EE
OCT 1981		229.44 75	K21754483EE	DITTO K101747185EE
OVT 1981		611.84 200	R10284711EE	DITTO R137344632EE
NOV 1981		145.52 50	L87201014EE	DITTO L550298065EE
NOV 1981		227.76 75	K21962801EE	DITTO K101747184EE
NOV 1981		594.08 200	R10473740EE	DITTO R137344631EE
DEC 1981		145.52 50	L87994774EE	DITTO L550298064EE
DEC 1981		297.04 100	C35846236EE	DITTO C-586074552EE
DEC 1981		594.08 200	R10720744EE	DITTO R137344630EE
		11,196.98		

JAN 1982	222.78	75	K22664763EE	ELMER H BRUNSTING OR
JAN 1982	297.04	100	C36623992EE	NELVA E BRUNSTING
JAN 1982	594.00	200	R11303467EE	DITTO
FEB 1982	148.52	50	L91576789EE	DITTO
FEB 1982	297.04	100	C36678673EE	DITTO
FEB 1982	594.00	200	R11338971EE	DITTO
MARCH 1982	222.78	75	K23083831EE	DITTO
MARCH 1982	297.04	100	C36718817EE	DITTO
MARCH 1982	594.00	200	R11374723EE	DITTO
APRIL 1982	222.78	75	K23121260EE	DITTO
APRIL 1982	297.04	100	C40523680EE	DITTO
APRIL 1982	594.00	200	R11584168EE	DITTO
MAY 1982	216.30	75	K23495917EE	DITTO
MAY 1982	288.40	100	C40594461EE	DITTO
MAY 1982	576.80	200	R11601130EE	DITTO
JUNE 1982	216.30	75	K23536240EE	DITTO
JUNE 1982	288.40	100	C41593583EE	DITTO
JUNE 1982	576.80	200	R11710847EE	DITTO
JUL7 1981	216.30	75	K23579140EE	DITTO
JULY 1982	288.40	100	C43012682EE	DITTO
JULY 1982	576.80	200	R11827387EE	DITTO
AUG 1982	216.30	75	K29080326EE	DITTO
AUG 1982	288.40	100	C43673159EE	DITTO
AUG 1982	576.80	200	R11843838EE	DITTO
SEPT 1982	144.20	50	L109061867EE	DITTO
SEPT 1982	288.40	100	C43899488EE	DITTO
SEPT 1982	576.80	200	R11932700EE	DITTO
OCT 1982	216.30	75	K34434512EE	DITTO
OCT 1982	288.40	100	C46517845EE	DITTO
OCT 1982	576.80	200	R12764765EE	DITTO
NOV 1982	192.72	75	K34462816EE	DITTO
NOV 1982	256.96	100	C46556481EE	DITTO
NOV 1982	513.92	200	R12807995EE	DITTO
DEC 1982	192.72	75	K35841574EE	DITTO
DEC 1982	256.96	100	C47000524EE	DITTO
DEC 1982	513.92	200	R13202009EE	DITTO
	12,725			
JAN 1983	192.72	75	K35869372EE	ELMER H BRUNSTING OR
JAN 1983	256.96	100	C47086584EE	NELVA E BRUNSTING
JAN 1983	513.92	200	R13214791EE	DITTO
FEB1983	128.48	50	L136290497EE	DITTO
FEB1983	256.96	100	C54019850EE	DITTO
FEB 1983	513.92	200	R13915588EE	DITTO
MARCH 1983	192.66	75	K36534795EE	DITTO
MARCH 1983	256.88	100	C54064392EE	DITTO
MARCH 1983	513.76	200	R14184718EE	DITTO
APRIL 1983	192.66	75	K39737381EE	DITTO
APRIL 1983	256.88	100	C55118367EE	DITTO
APRIL 1983	513.76	200	R14244640EE	DITTO
MAY 1983	182.34	75	K39755808EE	DITTO
MAY 1983	243.12	100	C55144028EE	DITTO

1-800-333-2919

4%

MAY 1983	486.24	200	R14256620EE	DITTO R137344643 EE
JUNE 1983	182.34	75	K39784382EE	DITTO K101747169EE
JUNE 1983	243.12	100	C55185840EE	DITTO C586074534EE
JUNE 1983	486.24	200	R15649975EE	DITTO R137344612EE
JULY 1983	182.3475		K39817083EE	DITTO K101747168EE
JULY 1983	234.12	100	C55647118EE	DITTO C586074533EE
JULY 1983	486.24	200	R14702862EE	DITTO R137344611EE
	6515.77			

Redemption for Alex only 713-617-4433

SERIES HH BONDS

	TAXABLE			
~~OCT 1982~~	385.52	500	D284696HH	ELMER H BRUNSTING OR D42527311HH
~~OCT 1982~~	385.53	500	D284697HH	NELVA E BRUNSTING D42527321HH
NOV 1988	694.56	1000	M2577341HH	DITTO M60242231HH
NOV 1988	694,56	1000	M2577342HH	DITTO M60242241HH
		3000		

Sorry for 20 yrs

123,531.51

123,581.51

3000 2 HH

120,581.51

Purchase Price

Taxable

26,493.75 cost

94087.76 TAXABLE

2160.18 HH Taxable

96247.94 TAX ABLE

26949.42 @ 20%

69298.52 TAX PD

26493.75 cost E-EE

858.32 cost H-H

96624.27 Alex

HH - 3000 PAR

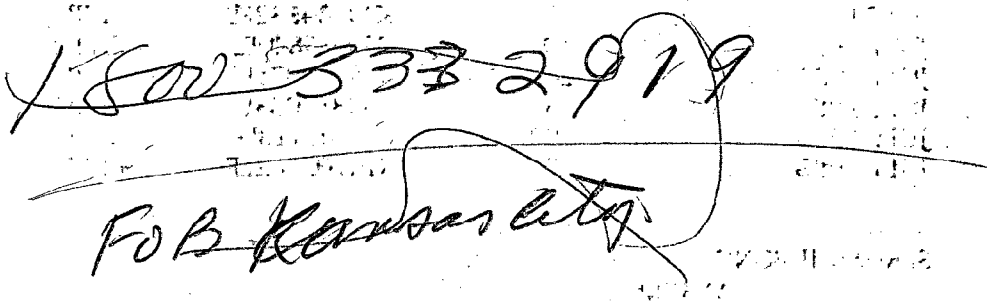
Int. Taxed - 2160

858.32

385.53
694.56
1080.09
x2
2160.18

3000
2160
858.32

1403 Discount



P4949

PD F 5313
Department of the Treasury
Bureau of the Public Debt
(Revised June 1997)

SAVINGS BOND REDEMPTION CHECK

The enclosed check represents payment for the redemption of series F, G, H, J, K, or HH bonds. If you also requested payment for the redemption of series EE or E bonds or the issue of new bonds, you will receive them separately.

Please direct questions concerning this check to the Bureau of the Public Debt at (304) 480-7999.

*U.S.GPO:1997-418-006/64315

PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM

REQUEST FOR REDEMPTION OF U.S. SAVINGS BONDS, NOTES, RETIREMENT PLAN & INDIVIDUAL RETIREMENT BONDS

INSTRUCTIONS

1. Complete separate requests for Series E/EE, H/HH, and I bonds.
2. **All** bonds must be signed by the payee and the signature must be **certified** by a bank official, authorized bank individual or **notary** on the back of the bond.
3. When bonds are being submitted to the Federal Reserve Bank for redemption, we become the paying agent. Therefore, your paying agent stamp is not needed on the front of the bond and the 1099-INT will be issued by the Bureau of Public Debt at the end of the year.
4. Series H/HH bonds will suffer a loss of interest if presented for payment in any month other than the month that interest is paid. Be sure to check the appropriate box below to clarify the payee's intentions for payment.
5. Series EE bonds issued after May 1, 1997, and I bonds are subject to a loss of the three most recent months' interest when redeemed within the first five years.

If you have any questions, please do not hesitate to call the Savings Bond Customer Service Unit between the hours of 8:00 a.m. and 6:00 p.m. CDT.

Kansas City Area	881-2919
Long Distance Calls	(800) 333-2919

Submit completed form to:

Federal Reserve Bank of Kansas City
Savings Bond Department
P.O. Box 419440
Kansas City, Missouri 64141-6440

Series of Bonds	Number of Bonds	Total Face Value	Payee's Social Security or Tax I.D. Number	Date

Payee's Name

Payee's Street Address

City, State, Zip Code

Name of Contact and Telephone Number for Questions Regarding Request

Method of Payment

☐ Check, mail payment to:
(If other than payee's address as indicated above).

☐ Credit financial institution's reserve account or correspondent's reserve account as designated on Federal Reserve Bank records. (This is not an ACH deposit.)

Name of Submitting Financial Institution

9-Digit ABA Number	4-Digit Branch Number

Street Address

City, State, Zip Code

Inscription on Savings Bond(s)
(Name(s) and address on face of bond)

Evidence

☐ Return Evidence (i.e., death certificate, court papers, or other documentation)

☐ Evidence previously submitted to your processing site. _____ Date

Complete this section for Series H or HH savings bonds only.

☐ **Hold bonds until after interest is paid next month.**
NOTE: Requests can only be held for a maximum of 30 business days prior to the next interest payment due date.

Pay Bonds in month of _____.

☐ Redeem bonds immediately regardless of interest payment due date and forfeit next interest payment.
NOTE: No payment of bonds will be made during the last five business days of the month prior to the month that interest is due.

FOR FEDERAL RESERVE BANK USE ONLY - DO NOT WRITE BELOW THIS LINE

Evidence Notations

Examiner

Date Received _____

Out Date _____

Initials _____

Date Examined _____

Processing Notations

TRAN _____ PRI _____

1st Pass _____ Total CRV _____

2nd Pass _____

Arb _____ Unbal _____

Res _____ Bal _____

WHITE COPY - FRB
YELLOW COPY - Customer Copy

SD 120 (Rev. 10-98)

P4951

PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM

REQUEST FOR REDEMPTION OF U.S. SAVINGS BONDS, NOTES, RETIREMENT PLAN & INDIVIDUAL RETIREMENT BONDS

INSTRUCTIONS

1. Complete separate requests for Series E/EE, H/HH, and I bonds.
2. **All** bonds must be signed by the payee and the signature must be **certified** by a bank official, authorized bank individual or **notary** on the back of the bond.
3. When bonds are being submitted to the Federal Reserve Bank for redemption, we become the paying agent. Therefore, your paying agent stamp is not needed on the front of the bond and the 1099-INT will be issued by the Bureau of Public Debt at the end of the year.
4. Series H/HH bonds will suffer a loss of interest if presented for payment in any month other than the month that interest is paid. Be sure to check the appropriate box below to clarify the payee's intentions for payment.
5. Series EE bonds issued after May 1, 1997, and I bonds are subject to a loss of the three most recent months' interest when redeemed within the first five years.

If you have any questions, please do not hesitate to call the Savings Bond Customer Service Unit between the hours of 8:00 a.m. and 6:00 p.m. CDT.

Kansas City Area	881-2919
Long Distance Calls	(800) 333-2919

Submit completed form to:

Federal Reserve Bank of Kansas City
Savings Bond Department
P.O. Box 419440
Kansas City, Missouri 64141-6440

Series of Bonds	Number of Bonds	Total Face Value	Payee's Social Security or Tax I.D. Number	Date

Payee's Name

Payee's Street Address

City, State, Zip Code

Name of Contact and Telephone Number for Questions Regarding Request

Method of Payment

☐ Check, mail payment to:
(If other than payee's address as indicated above).

☐ Credit financial institution's reserve account or correspondent's reserve account as designated on Federal Reserve Bank records. (This is not an ACH deposit.)

Name of Submitting Financial Institution

9-Digit ABA Number	4-Digit Branch Number

Street Address

City, State, Zip Code

Inscription on Savings Bond(s)
(Name(s) and address on face of bond)

Evidence

☐ Return Evidence (i.e., death certificate, court papers, or other documentation)

☐ Evidence previously submitted to your processing site. _____ Date

Complete this section for Series H or HH savings bonds only.

☐ **Hold bonds until after interest is paid next month.**
NOTE: Requests can only be held for a maximum of 30 business days prior to the next interest payment due date.

Pay Bonds in month of _____.

☐ Redeem bonds immediately regardless of interest payment due date and forfeit next interest payment.
NOTE: No payment of bonds will be made during the last five business days of the month prior to the month that interest is due.

FOR FEDERAL RESERVE BANK USE ONLY - DO NOT WRITE BELOW THIS LINE

Evidence Notations

Examiner

Date Received _____

Out Date _____

Initials _____

Date Examined _____

Processing Notations

TRAN	PRI
1st Pass	Total CRV
2nd Pass	
Arb	Unbal
Res	Bal

WHITE COPY - FRB
YELLOW COPY - Customer Copy

SD 120 (Rev. 10-98)

P4952

17-20360.1258

BRUNSTING000985

Dear Savings Bond Customer:

Enclosed are the Savings Bond forms you requested. If you are sending a transaction to our office for processing, please be sure to include the completed form and any necessary legal documents. If enclosing savings bonds, please record serial numbers prior to mailing.

Federal Reserve Bank - K.C.
PO Box 419440
Kansas City, MO 64141-6440

[redacted]

SD 89 (Rev. 4-96)

E. Brunsting
13630 Pine Rock
Houston TX 77079

Attention: _____

ABA No. _____ Daytime Phone # 713 464-4391 ☑ Over

Form #	Quantity
PD 345	
PD 385-1	
PD 1048	
PD 1050	
PD 1455	
PD 1522	
PD 1849	
PD 1851	
PD 1938	
PD 1980	
PD 1993	
PD 2458	
PD 2488-1	
PD 2517	

Form #	Quantity
PD 2966	
PD 3062	
PD 3253	
PD 3360	
PD 3500	
PD 3501	
PD 3600	
PD 3782	
PD 3900	
PD 4000	
PD 4651	
PD 4652	
PD 5255	
PD 5263	

P4953

17-20360.1259
BRUNSTING000986

Form #	Quantity
PD 5263-1	
PD 5276	
PD 5336	
Supply Requisition	
SD 3 B	
SD 23	
SD 91	
SD 103	
SD 120	
SD 211	
FA 500	
SD 500	
SD 1340	
SF 1199A	

Form #	Quantity
W8	
W9	
SBD 2059	
SBD 2084	
SBD [redacted]	
SBD 2113	
SBD 2118	
SBD 2139	
SBD 2162	
CIRC 1-80	
CIRC 2-80	
CIRC 3-80	
CIRC 4-67	
CIRC 530	

Form #	Quantity
CIRC 750	
Red. Table E/SN	
Red. Table EE	
Guaranteed Rate	1
~~IB Packet~~	
PD News	
Interim Rate	
Table of Interest Dates	
The Book	
Form 1001	
Other	

P4954

17-20360.1260

BRUNSTING000987

Brooks & Carlson

X507

March 1968 100 C 2116581320 E

March 1969 50 L 2225131584 E

100 C. 2116581324 E

July 1970 100 L 2225131865 E

50 C - 2116581284 E

400 X ~2027

Carbon 9/23/97

	0.00 *
	0.00 *
	0.00 *
68	2,496.00 +
	2,496.00 *
	120.00 +
	120.00 +
	120.00 +
	240.00 +
	240.00 +
69	240.00 +
	240.00 +
	480.00 +
	480.00 +
	480.00 +
	480.00 +
	480.00 +
	480.00 +
	480.00 +
	480.00 +
	5,160.00 *
	120.00 +
	2,400.00 +
70	4,800.00 +
	7,320.00 *
	2,500.00 +
	5,100.00 +
	7,300.00 +
	14,900.00 *

+ must get 71 Rebar on 19 & when in stock # 69

Bank of America

Customer Receipt

☐ Checking Deposit ☐ Savings Deposit ☐ Line of Credit ☐ Consumer Loan ☐ Commercial Loan ☐ Visa/MasterCard
☐ Federal Tax Deposit ☐ Safe Deposit Box ☐ Other (specify) _____

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.
Member FDIC

Home State of Account _____

Taylor Jacobs

TOTAL

8519001143# 008 159 948 70601#013D $23054.12 D

95-14-1960B 6-2000

P4957

17-20360.1263

BRUNSTING000990

Bank of America

U.S. Savings Bond E/EE
Interest Income

Interest Income to be Reported to the Internal Revenue Service (Form must be typed or printed legibly)

Customer Information (Customer Mailing Address for 1099 Statement)

Customer Name (Name of party receiving funds)	Tax ID (TIN)
Elmer H. Brunsting	282-32-8905
Street Address/Apt. Number	**City/State/Zip Code**
13630 Pinerock	Houston, TX, 77079

I certify that the TIN shown on this form is my correct Taxpayer Identification Number for reporting to the IRS.

Customer Signature Elmer H Brunsting Date 07-06-01

Associate Information

Prepared By	Teller Number	Telephone Number
M. Sarvani	008	(713) 365-3220
Bank Number/Cost Center	**Banking Center Name/ Number**	
159/8519	Town & Country / 159	

Transaction Information (Complete all applicable fields)

Type of Bonds (Check applicable type)	Redemption Date	Number of Bonds
☑ Series E ☐ Series EE	07-06-01	11
Purchase Price (A)	**Interest Amount paid (B) (Amount reported to the IRS as Interest Income)**	**Total Amount Paid (C) (A + B = C)**
$ 825.00	$ 4229.12	$ 5054.12 ✓
Deposit to Account Number	**Total Deposit Amount**	
0085190011 43	$ 5054.12	
Cash Ticket Number	**Cashier's Check Number**	
@27% 1141.56 Tot 27%	18006 — 230 54.12	

TEFRA Use Only

Entered By	Date	Delete	Date
Verified By	**Date**	**Re-entered**	**Date**

00-14-2944B 4-1999 White - TEFRA Canary - Customer Pink - File

P4958

17-20360.1264

BRUNSTING000991

BOND INFORMATION

PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2001/07 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 - I BONDS

# OF BONDS	SERIES 1,2,3,4	FACE VALUE	ISSUE YYYY/MO	PER BOND REDEMP. VAL	PER BOND INT EARNED	TOTALS REDEMP. VAL	TOTALS INT EARNED
1	1	100	1974/01	465.48	390.48	465.48	390.48
1	1	100	1974/02	456.36	381.36	456.36	381.36
2	1	100	1974/03	456.36	381.36	912.72	762.72
2	1	100	1974/04	456.36	381.36	912.72	762.72
2	1	100	1974/05	460.72	385.72	921.44	771.44
2	1	100	1974/06	461.80	386.80	923.60	773.60
1	1	100	1974/07	461.80	386.80	461.80	386.80

PAGE TOTAL 5054.12 4229.12

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

Bonds sold 1997

7/3, 8/23 and 9/23 Invested 12,237.50
Earned Interest 7041
Redemption Val 8378
all funds & checking each notes/bond $40
Tax due 7041 x .28 = 1971.48

12/2/97 - Investment $5990
Earned Int $28,321
Redempt $3431
Tax due = 28,321 x .28 = $7930

Funds after tax
Invest Refund $5990
Earn 28,321 x .28 28,321
Funds available 34,311
for Mut Funds 25000
to Tender 9311

7,8,9-1971
12 2930 9901
9901
24,410
for 25000 bonds 25000
Short 590
464

9901
9437
464

P4960

17-20360.1266

BRUNSTING000993

Modifications
In order to insure the success of the project, all exceptions and modifications to these obligations are to be negotiated with the Executive Director of Houston Habitat for Humanity, Inc.

The purpose of this document is not to create a legally binding agreement, but rather to set forth the expectations of each party so as to aid in creating a satisfying experience for Sponsoring Organization and Houston Habitat for Humanity.

The Board and Staff of Houston Habitat for Humanity look forward to working with in this exciting adventure.

_____ _____

HOUSTON HABITAT FOR HUMANITY SPONSORING ORGANIZATION

17-20360.1267
BRUNSTING000994

Contributory Retirement Plan and
Savings-Stock Bonus Plan of
Gulf Oil Corporation

EMPLOYEE NO. 114162
LOCATION NO. 800
SOCIAL SECURITY NO. 282-32-8905

AUTHORIZATION FOR SETTLEMENT

In accordance with the provisions of the Contributory Retirement Plan and/or the Savings-Stock Bonus Plan, the settlement shown below is authorized to be made for the account of E. H. BRUNSTING by reason of REQUEST 12/31/73

[X] None of this settlement is taxable [ ] Part of this settlement is taxable (see attachment)

	DESCRIPTION	COST OF BONDS AND/OR STOCK	CASH PAYMENT	TOTAL FUND SETTLEMENT
CRP (Cash)	PAYMENT FROM MEMBER'S ACCOUNT: CONTRIBUTIONS; INTEREST; ACCUMULATED CONTRIBUTIONS; PAYMENT UNDER SECTION 4F-1 OF THE PLAN			
	TOTAL SETTLEMENT UNDER CRP			
SAVINGS FUND(S) (U.S. Savings Bond(s) Series E and/or Cash)	TERM NO. 1972 24 BOND(S) 84 UNIT(S)	1,575.00	3.42	1,578.42
	TERM NO. 1973 24 BOND(S) 90 UNIT(S)	1,687.50	11.70	1,699.20
	TERM NO. BOND(S) UNIT(S)			
	TOTAL SETTLEMENT UNDER SAVINGS FUND(S) 48 BOND(S) 174 UNIT(S)	3,262.50	15.12	3,277.62
STOCK BONUS FUND(S) (Capital Stock of Gulf Oil Corporation and/or Cash)	TERM NO. SHARE(S) @			
	TERM NO. SHARE(S) @			
	TERM NO. SHARE(S) @			
	TOTAL SETTLEMENT UNDER STOCK BONUS FUND(S) SHARE(S)			
TOTAL SETTLEMENT UNDER ALL FUND(S)		3,262.50	15.12	3,277.62

NO. OF SHARES		IN NAME OF	AMOUNT

DATE	CHECK NUMBER(S)	IN NAME OF	AMOUNT
3/08/74	044993	E. H. BRUNSTING	$15.12

RETIREMENT PLAN COMMITTEE
SAVINGS PLAN COMMITTEE

Date MARCH 8, 1974

By James W. Chappel SECRETARY

GULF 8549-F PRINTED IN U.S.A.

(RETAIN THIS FORM FOR RECORD PURPOSES)

P4962

Bank of America
embracing ingenuity

USA

Official Sponsor 2002-2004 U.S. Olympic Teams

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.
Try Online Banking at www.bankofamerica.com

6230515416

95-14-2005B 06-2002

TERM	LOC.	EMPL. NO.	NAME	BONDS	UNITS
1972	800	114162	E. H. BRUNSTING	24	84

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

WAIVER OF LIABILITY
(18 and over)

To be read and signed by all persons intending to do volunteer work for Houston Habitat for Humanity.

I understand that my (or my dependent(s) work as a volunteer on or about a Habitat construction site or project will expose me (or my dependent(s) to various risks of injury or illness. I understand and assume these risks, and agree not to hold Houston Habitat for Humanity, its agents, employees or volunteers liable for such injury or illness.

Chapelwood United Methodist Church Group Volunteer

Shelley Montgomery *Date* 17 Sept 1994
(Signature)

1800-333 2919

all 30 yrs.

Series E 1973 Jan – Dec
1974 Jan Dec
1975
1976
1977
1978 Jan only

Series EE 1981
1982
1983 - Jan - July

minimum 9
mo ⇒ 6 mo

HH - Oct 1982 were 6? now ?

min. 1980

1st Bus Day ~~after~~ month – prior

Fed Res Bk
KC

Oct - Dec Cycle
—
no int accrual
after 10 yrs
1994

17-20360.1272
BRUNSTING000999

Follow-up Notice
Matured HH/H Savings Bonds

The Bureau of the Public Debt previously notified you that your series HH/H United States savings bonds were about to mature. Our records show that the matured bonds on the reverse side of this notice are registered in your name **and no longer earn interest.**

Please redeem these bonds as soon as possible. Sign the "request for payment" on the back of each bond in the presence of an authorized certifying officer at a financial institution, and send the bonds to one of the Federal Reserve Banks listed on this notice (select the one nearest you).

If the bonds described on the reverse side of this notice have been lost, please write to the Bureau of the Public Debt, PO Box 2186, Parkersburg, West Virginia 26106-2186. We'll send you a form to file a claim.

If you've recently redeemed the bonds, please ignore this notice.

Federal Reserve Banks that Process Redemption Requests

FRB Pittsburgh
PO Box 299
Pittsburgh, PA 15230-0299

FRB Richmond
PO Box 85053
Richmond, VA 23285-5053

FRB Minneapolis
Savings Bond Services
PO Box 214
Minneapolis, MN 55480-0214

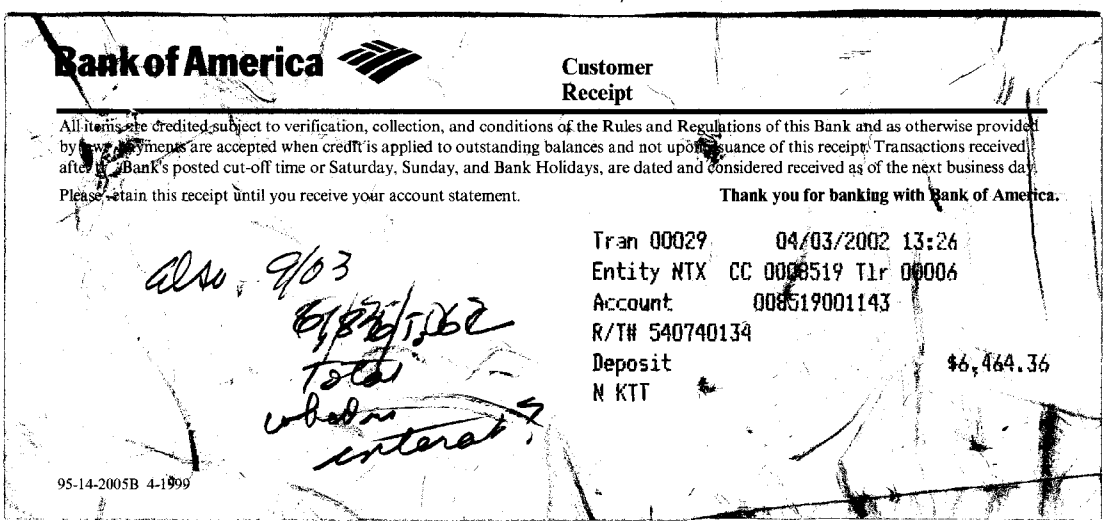
FRB Kansas City
PO Box 419440
Kansas City, MO 64141-6440

FRB New York
Savings Bond Examinations Div.
PO Box 961
Buffalo, NY 14240-0961

ISSUE DATE	DENOMI-NATION	SERIAL NUMBER		ISSUE DATE	DENOMI-NATION	SERIAL NUMBER	
		[illegible]	same #			[illegible]	same #

deferred interest
385.53
10/1982 20 years

PLEASE SEE REVERSE SIDE OF THIS PAGE FOR AN IMPORTANT NOTICE ABOUT YOUR MATURED SERIES HH/H UNITED STATES SAVINGS BONDS



Bank of America

Customer Receipt

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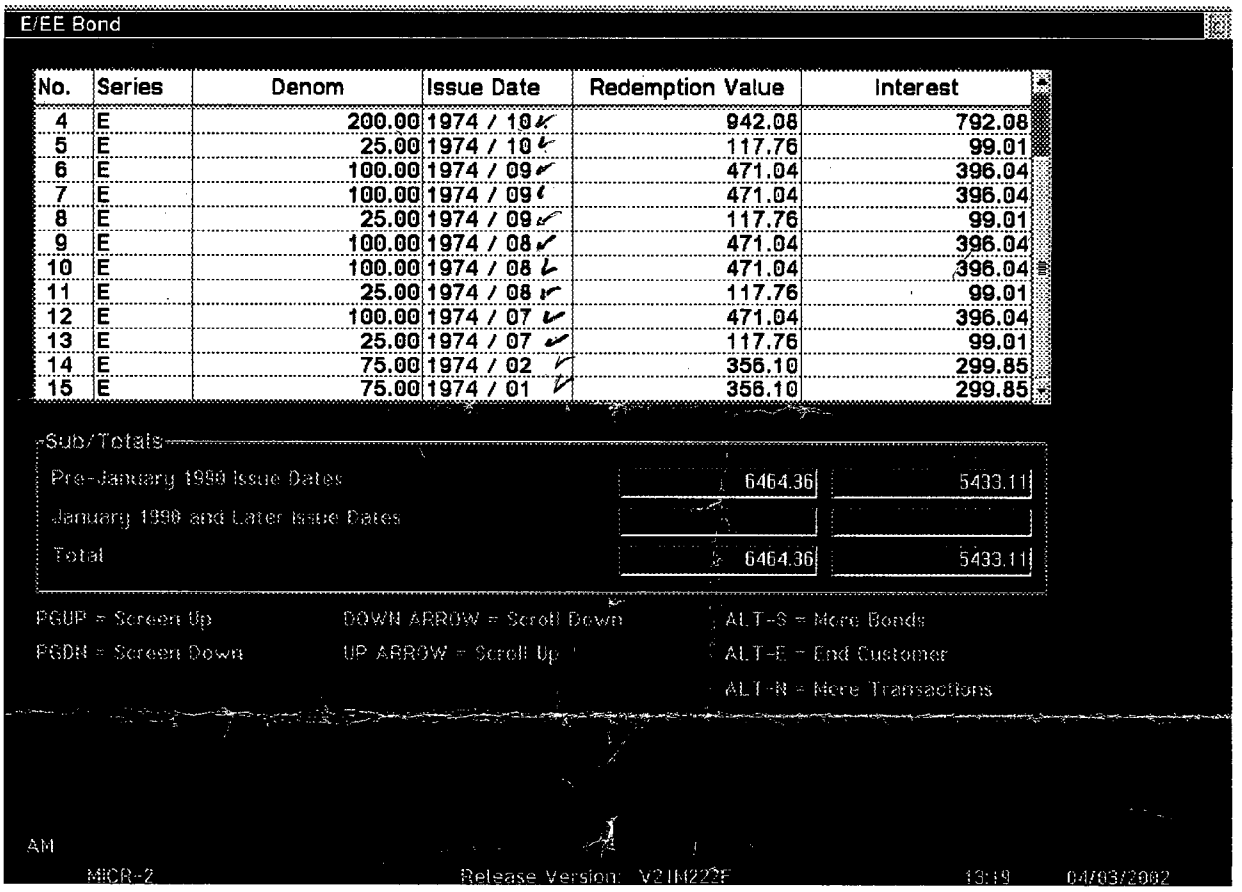
Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.

Tran 00029 04/03/2002 13:26
Entity NTX CC 0008519 Tlr 00006
Account 008519001143
R/T# 540740134
Deposit $6,464.36
N KTT

Also, 9/03
6,822.62
Total
when entered

95-14-2005B 4-1999



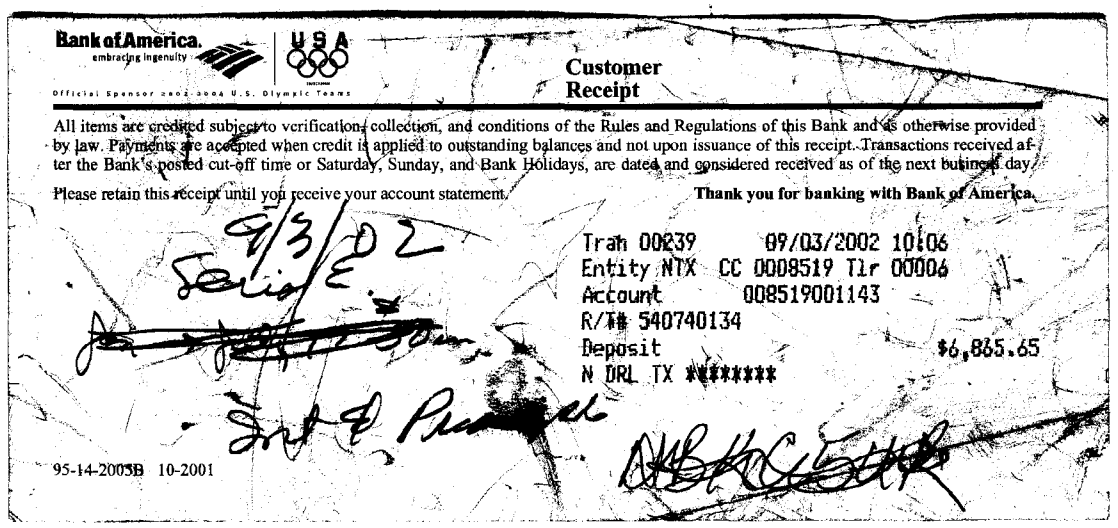
900 299 2265

0+0+0

P4970

17-20360.1276

BRUNSTING001003



Bank of America
embracing ingenuity

USA

Official Sponsor 2002 2004 U.S. Olympic Teams

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.

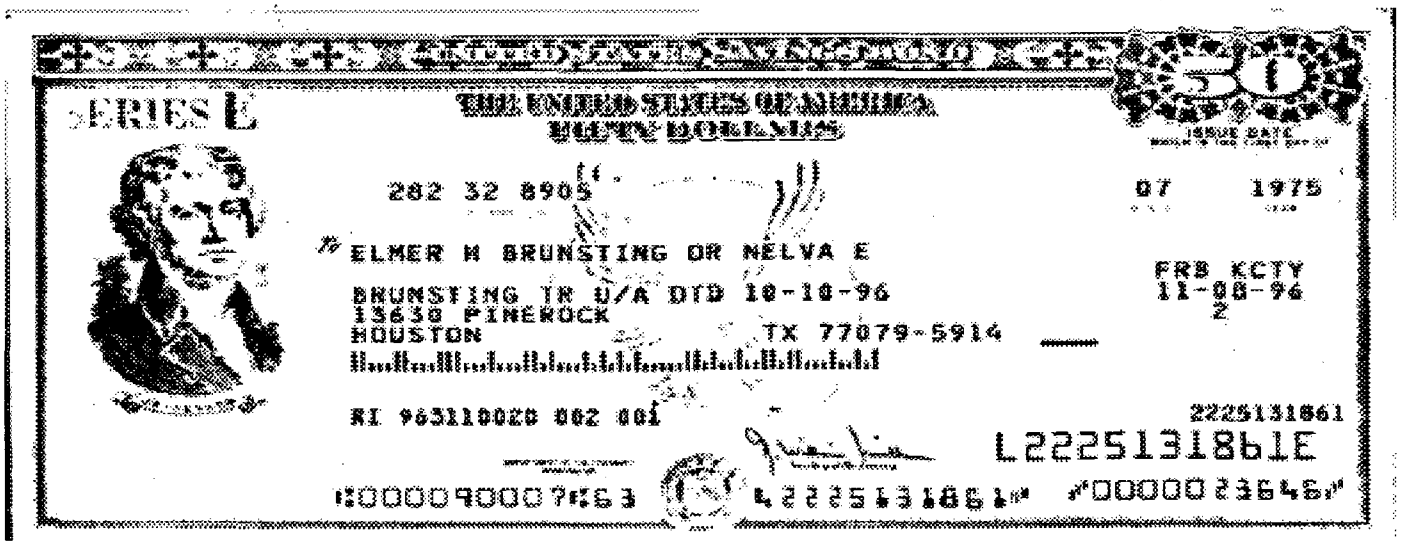
9/3/02

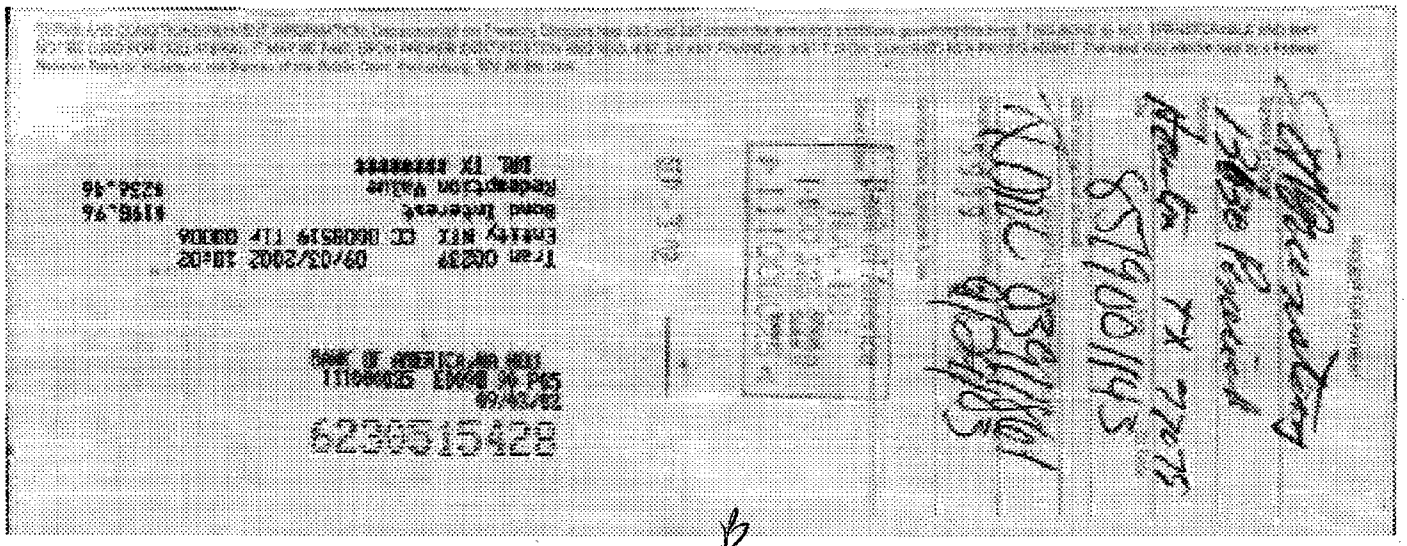
Tran 00239 09/03/2002 10:06
Entity NTX CC 0008519 Tlr 00006
Account 008519001143
R/T# 540740134
Deposit $6,885.65
N DRL TX ********

95-14-2005B 10-2001

Bank #: 00009000 Acct #: 06342225131861 Check #:

Amount: $236.46
Account: 06342225131861
Bank Number: 00009000
CD Volume #:
Check Number:





B

59.598 reward
Top - 5778.15

12/16/96
12/31/96
12.11.96

P4972

Bank #: 54074010 Acct #: 00008519001143 Check #:

Amount: $6865.65
Account: 00008519001143
Bank Number: 54074010
CD Volume #:
Check Number:

DEPOSIT TICKET

ELMER H. BRUNSTING 09/96
NELVA E. BRUNSTING
19630 PINEROCK
HOUSTON, TX 77079

DATE

Bank of America.

ACH RTT 111000025

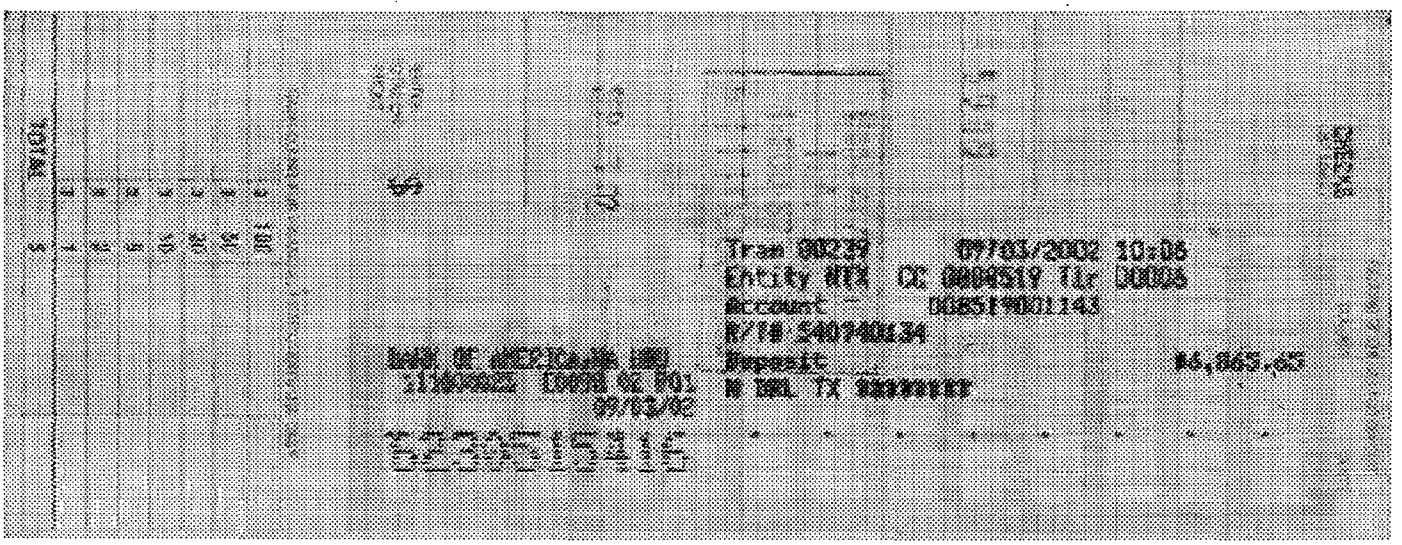
6865.65

SUBTOTAL

LESS CASH

NET DEPOSIT $ 6865.65

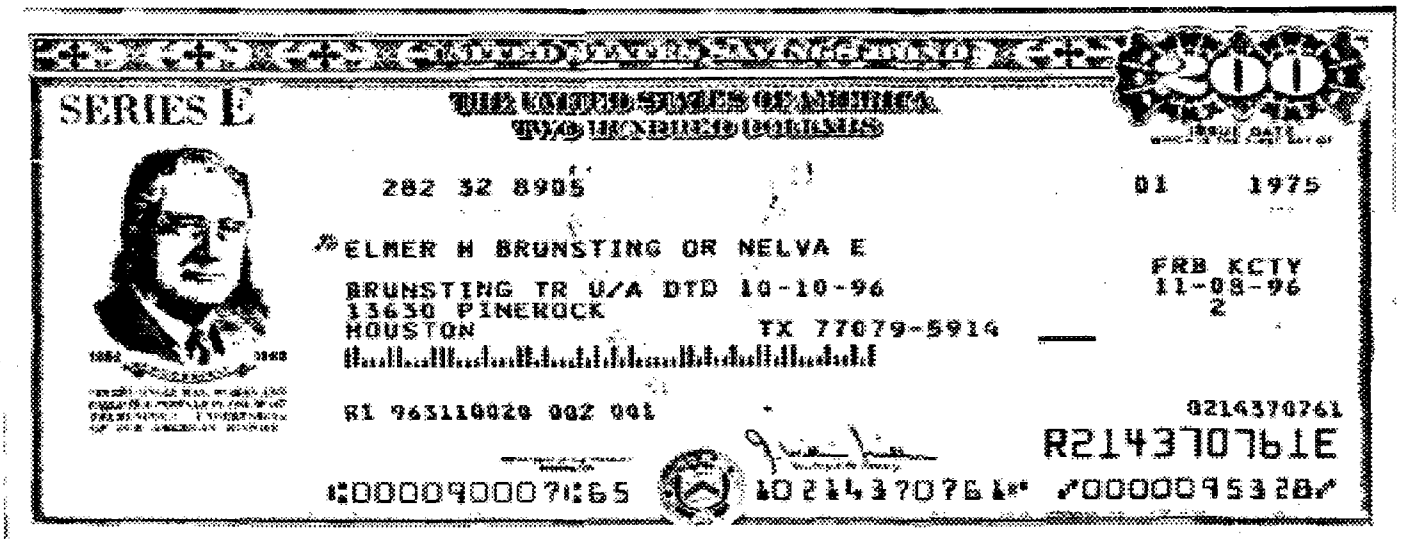
⑆540740105⑆ 00851900 1143⑈ ⑈000006865 65⑈

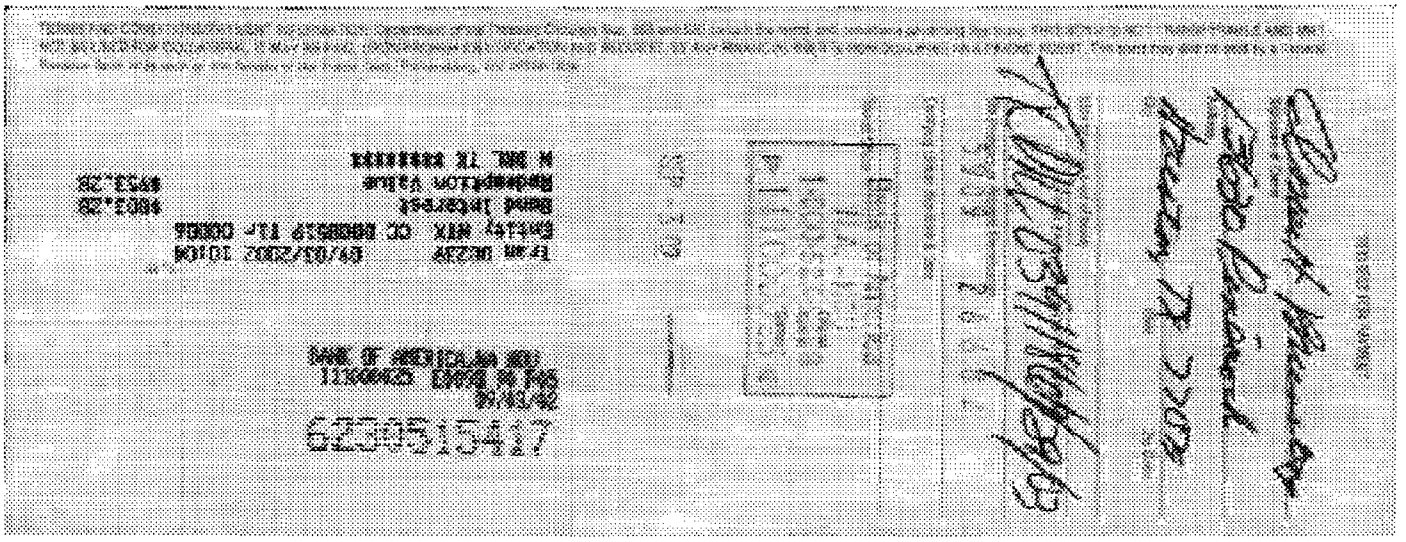


P4973

Bank #: 00009000 Acct #: 06510214370761 Check #:

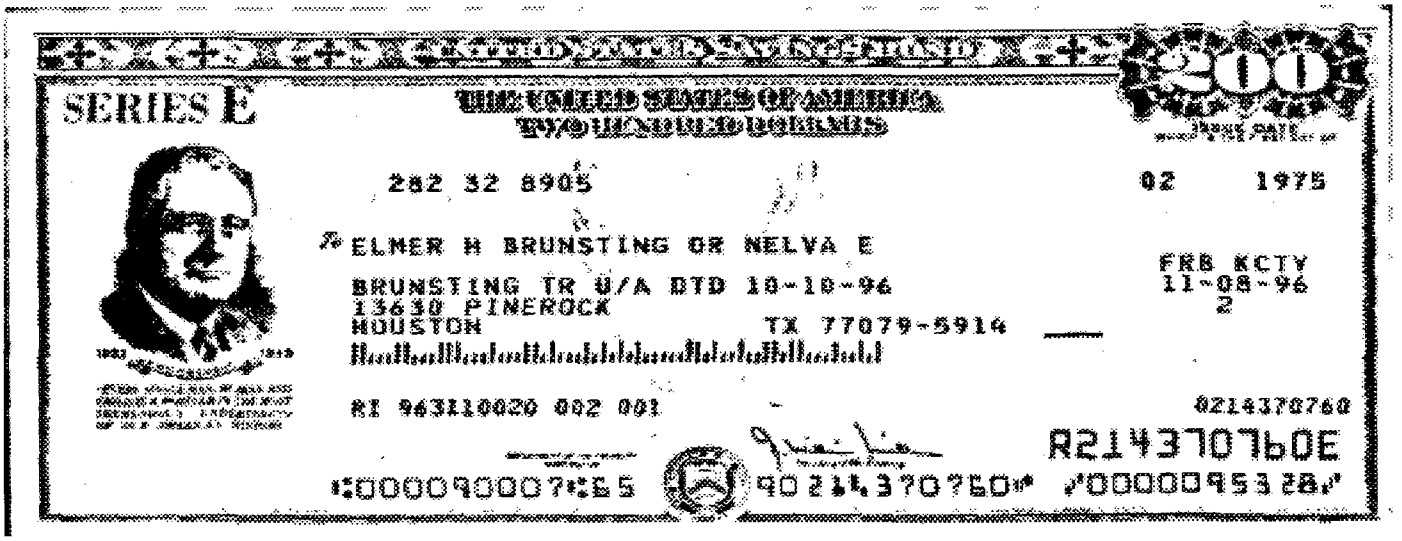
Amount: $953.28
Account: 06510214370761
Bank Number: 00009000
CD Volume #:
Check Number:

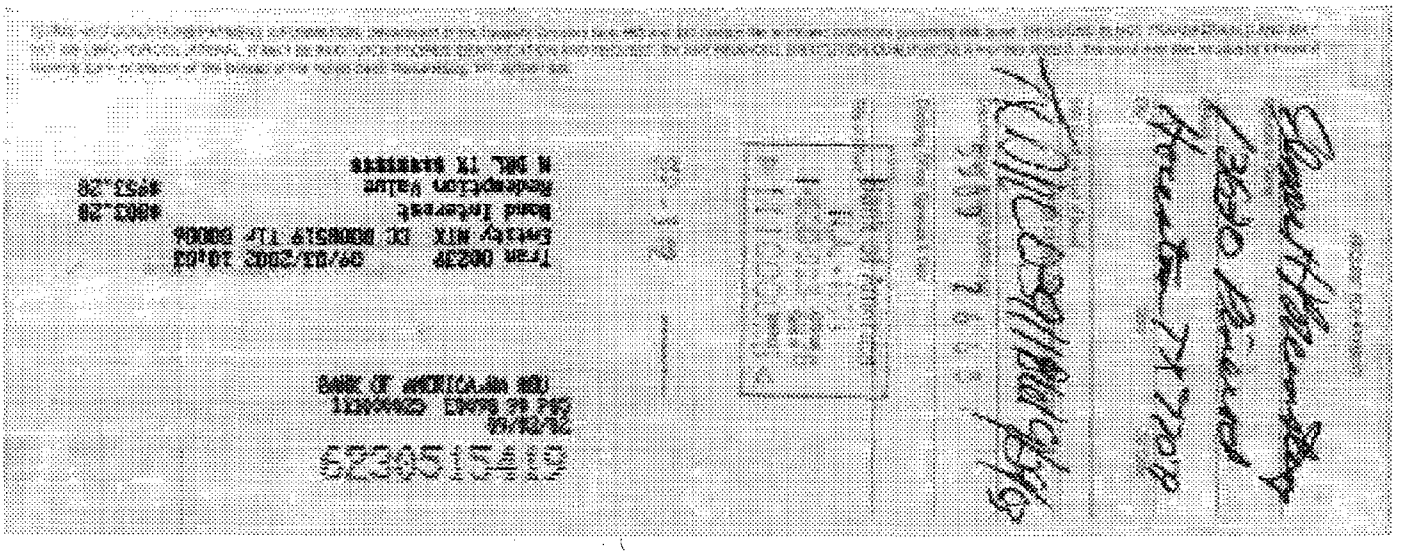




Bank #: 00009000 Acct #: 06590214370760 Check #:

Amount: $953.28
Account: 06590214370760
Bank Number: 00009000
CD Volume #:
Check Number:

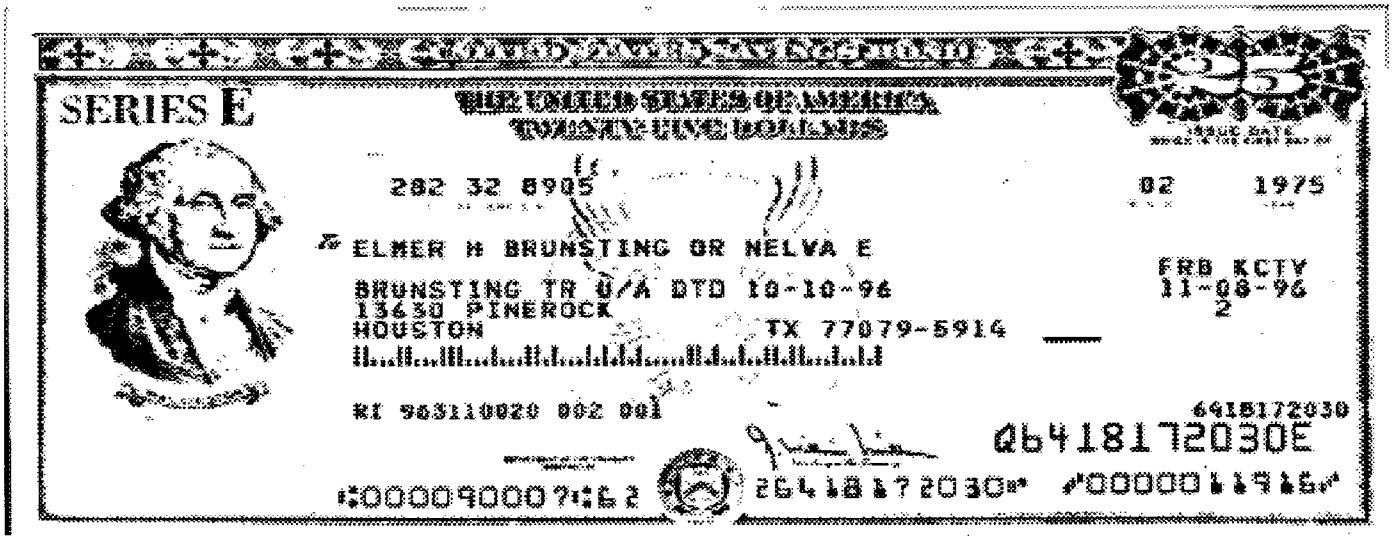


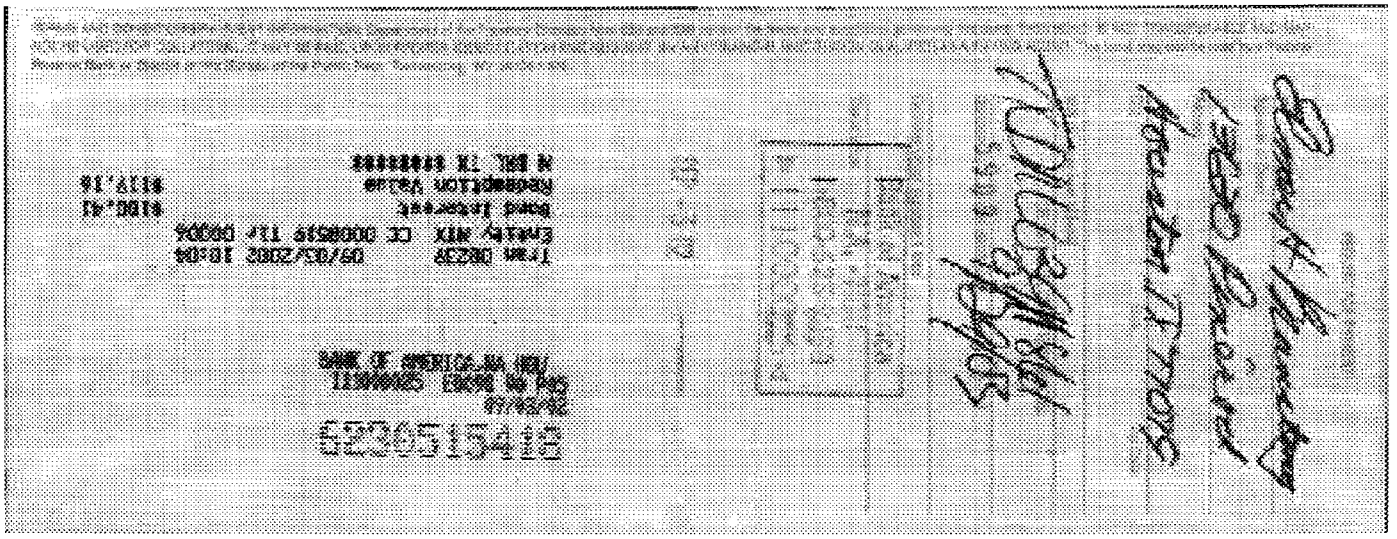


P4975

Bank #: 00009000 Acct #: 06226418172030 Check #:

Amount: $119.16
Account: 06226418172030
Bank Number: 00009000
CD Volume #:
Check Number:

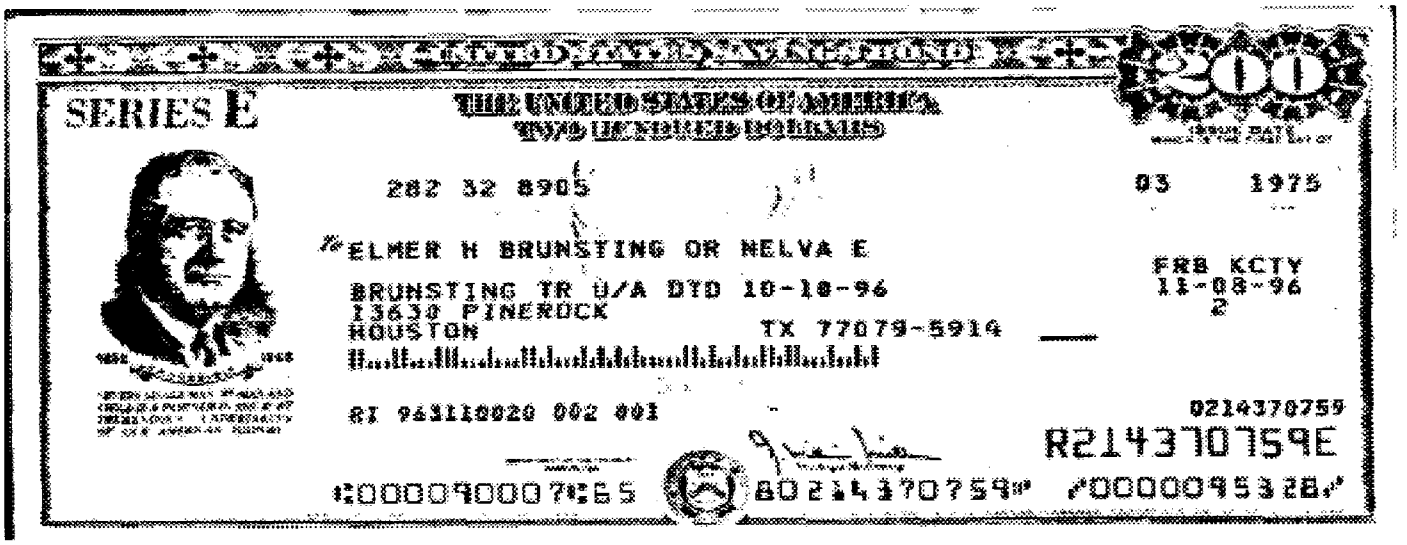


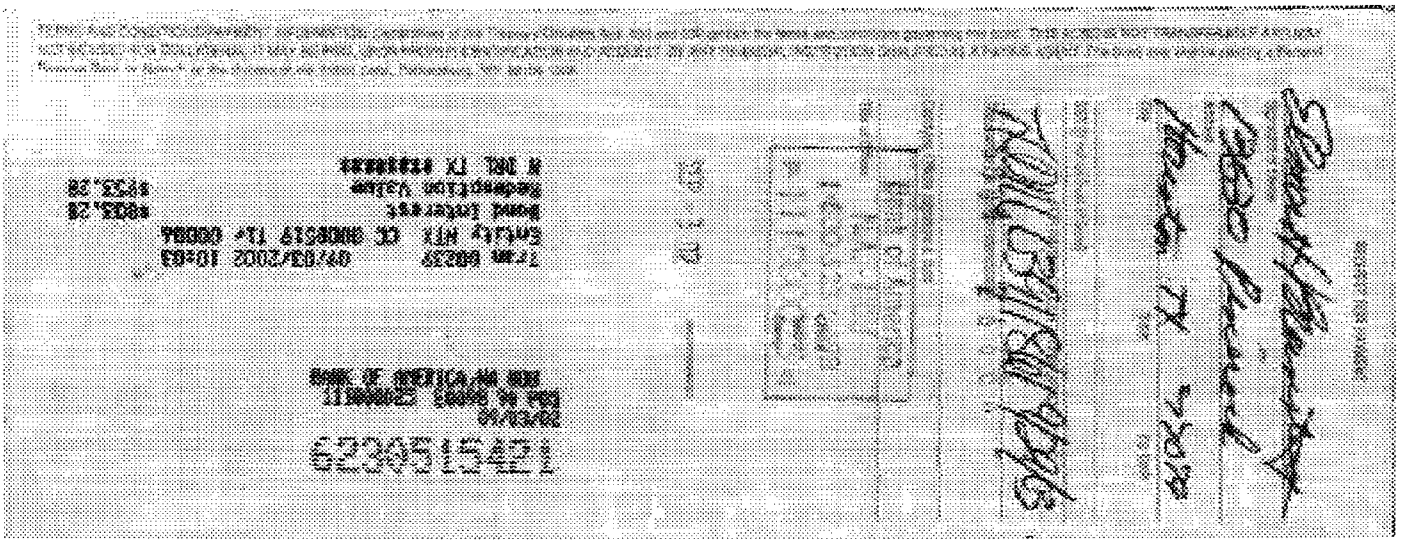


P4976

Bank #: 00009000 Acct #: 06580214370759 Check #:

Amount: $953.28
Account: 06580214370759
Bank Number: 00009000
CD Volume #:
Check Number:

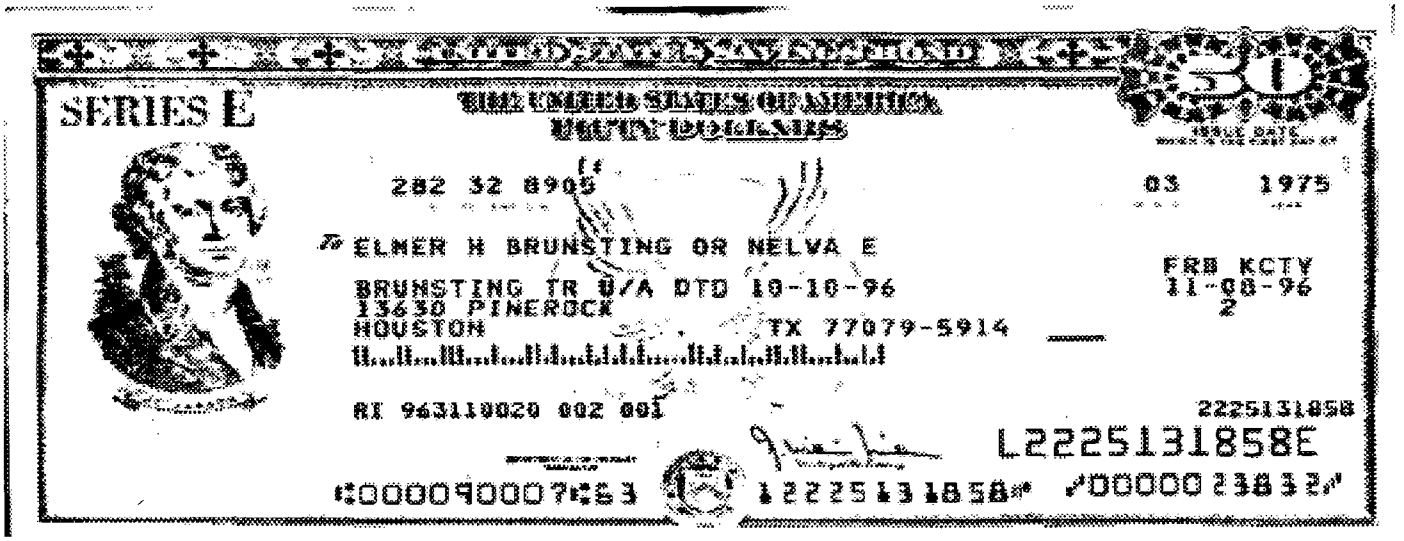


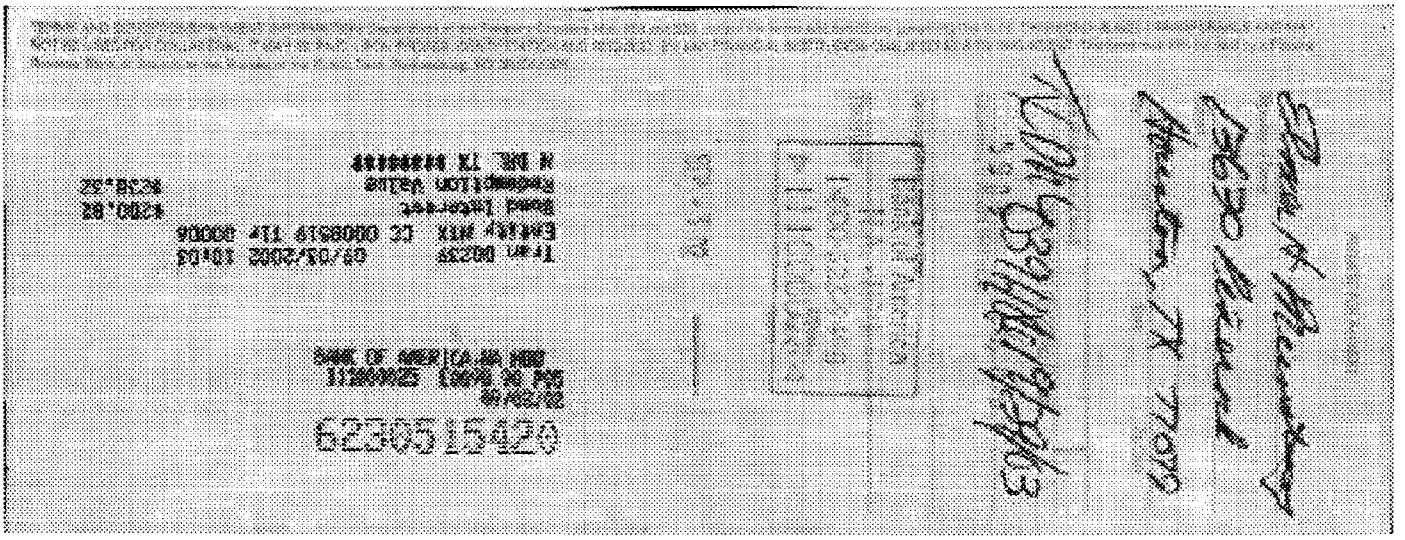


P4977

Bank #: 00009000 Acct #: 06312225131858 Check #:

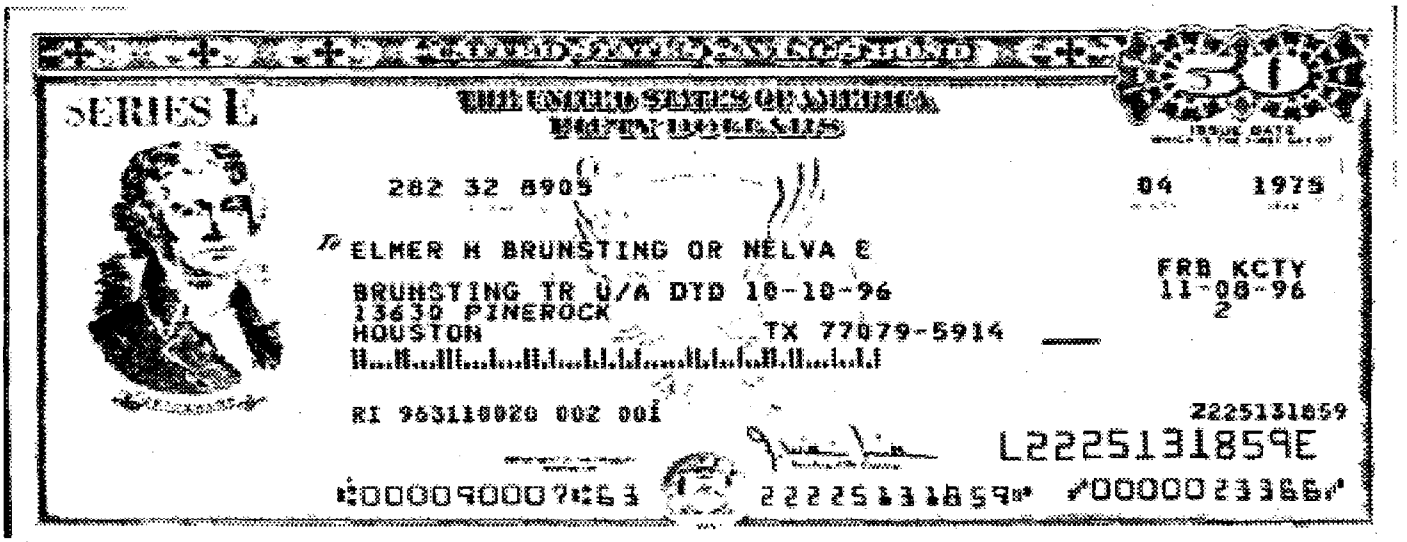
Amount: $238.32
Account: 06312225131858
Bank Number: 00009000
CD Volume #:
Check Number:

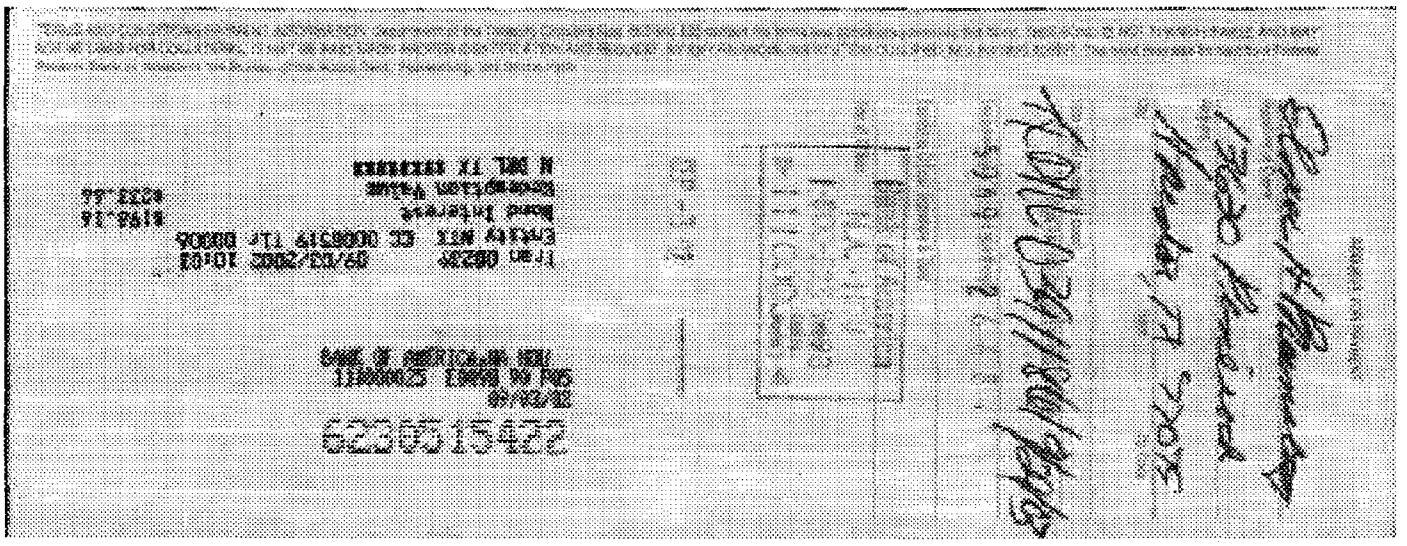




Bank #: 00009000 Acct #: 06322225131859 Check #:

Amount: $233.66
Account: 06322225131859
Bank Number: 00009000
CD Volume #:
Check Number:

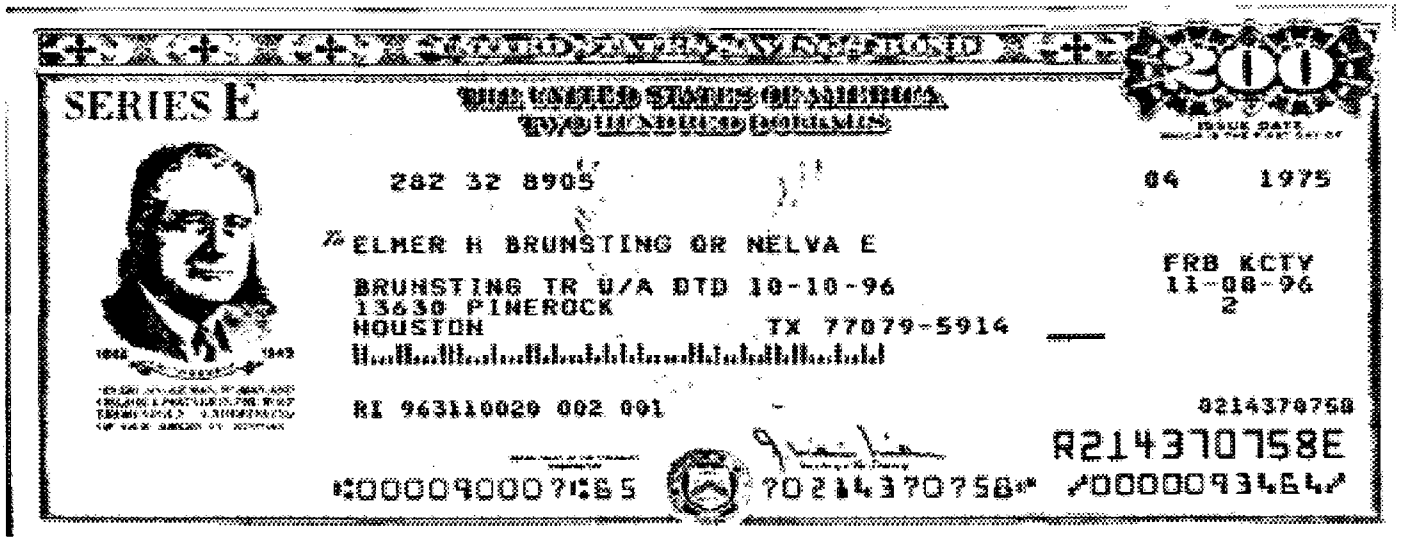


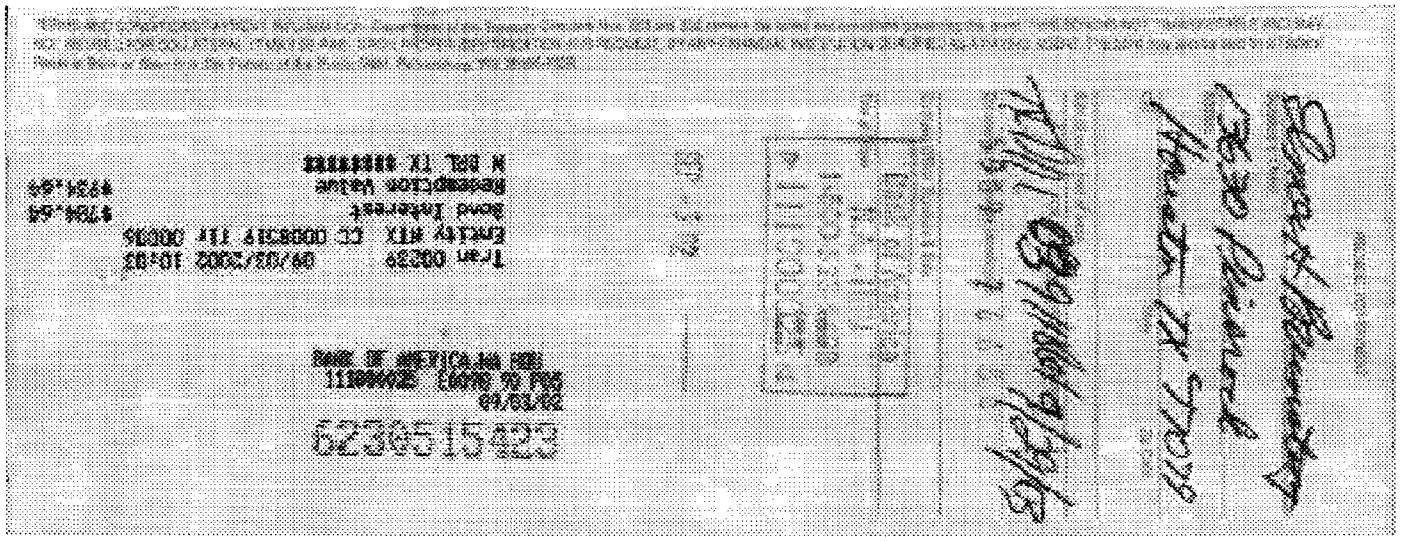


P4979

Bank #: 00009000 Acct #: 06570214370758 Check #:

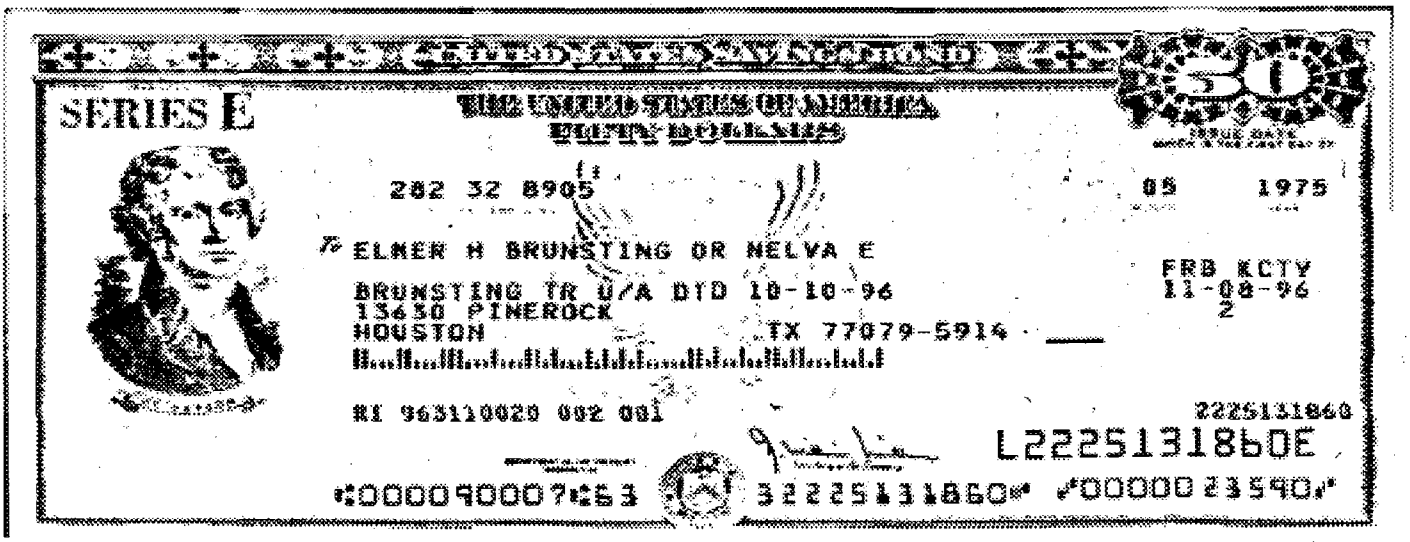
Amount: $934.64
Account: 06570214370758
Bank Number: 00009000
CD Volume #:
Check Number:

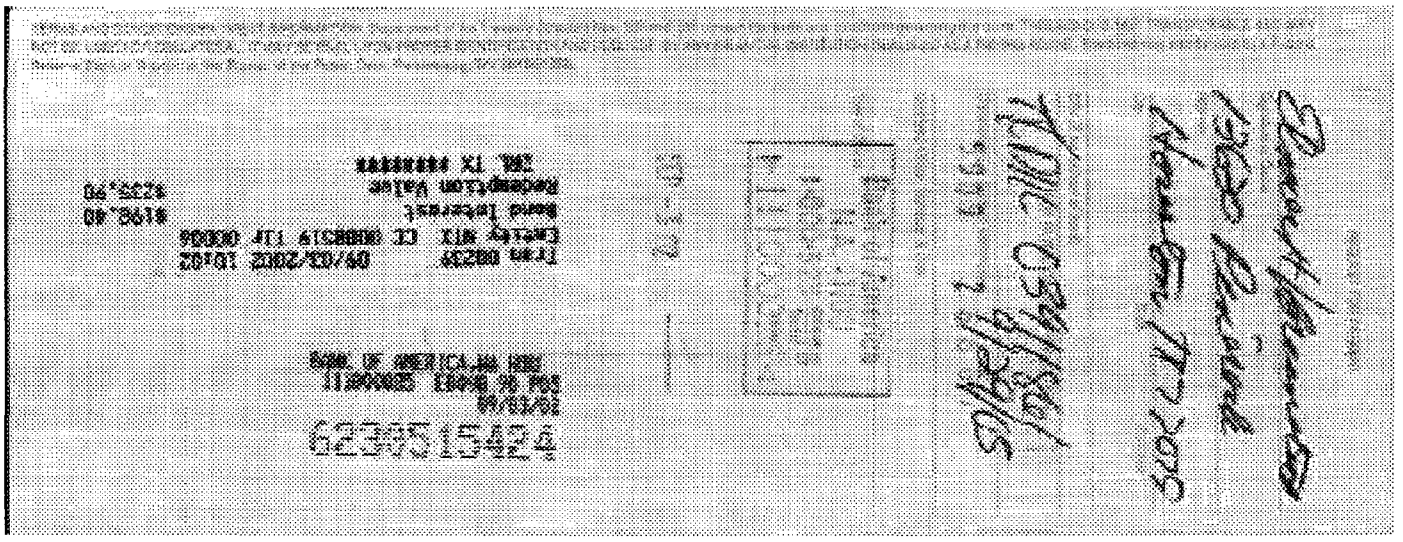




Bank #: 00009000 Acct #: 06332225131860 Check #:

Amount: $235.90
Account: 06332225131860
Bank Number: 00009000
CD Volume #:
Check Number:

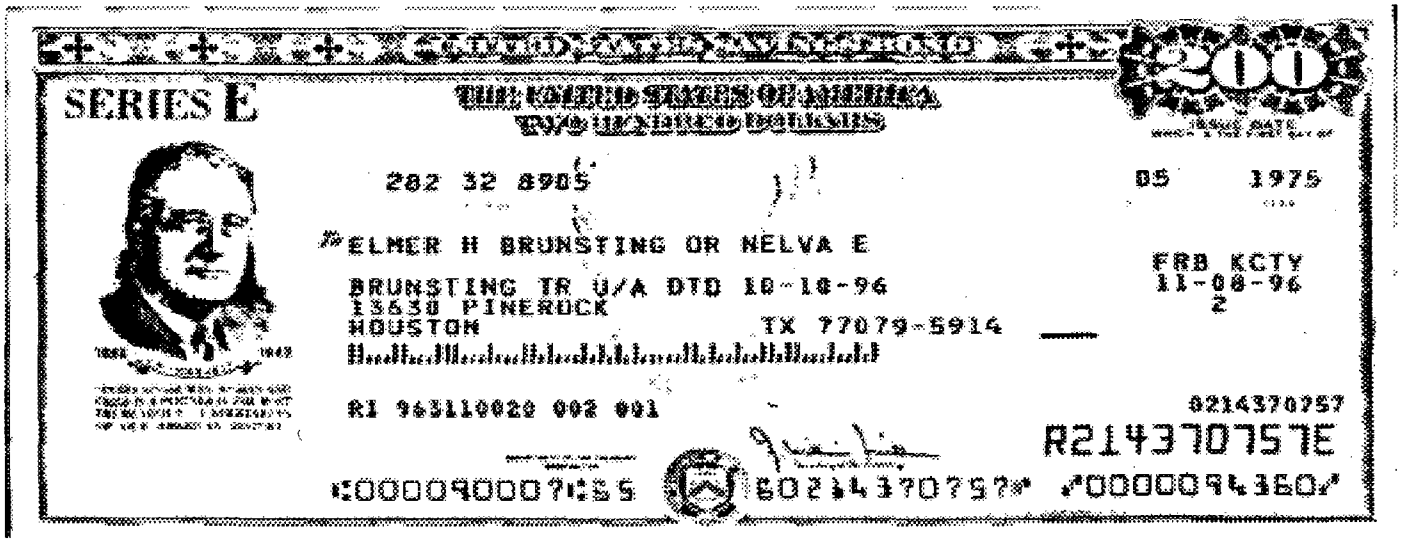


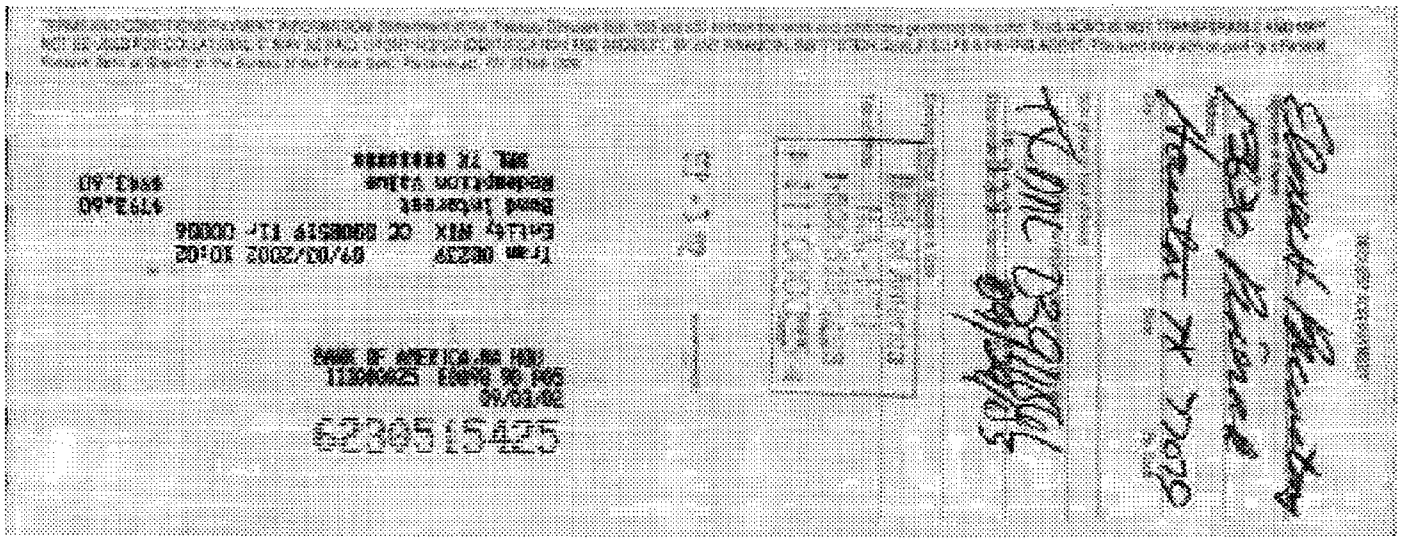


P4981

Bank #: 00009000 Acct #: 06560214370757 Check #:

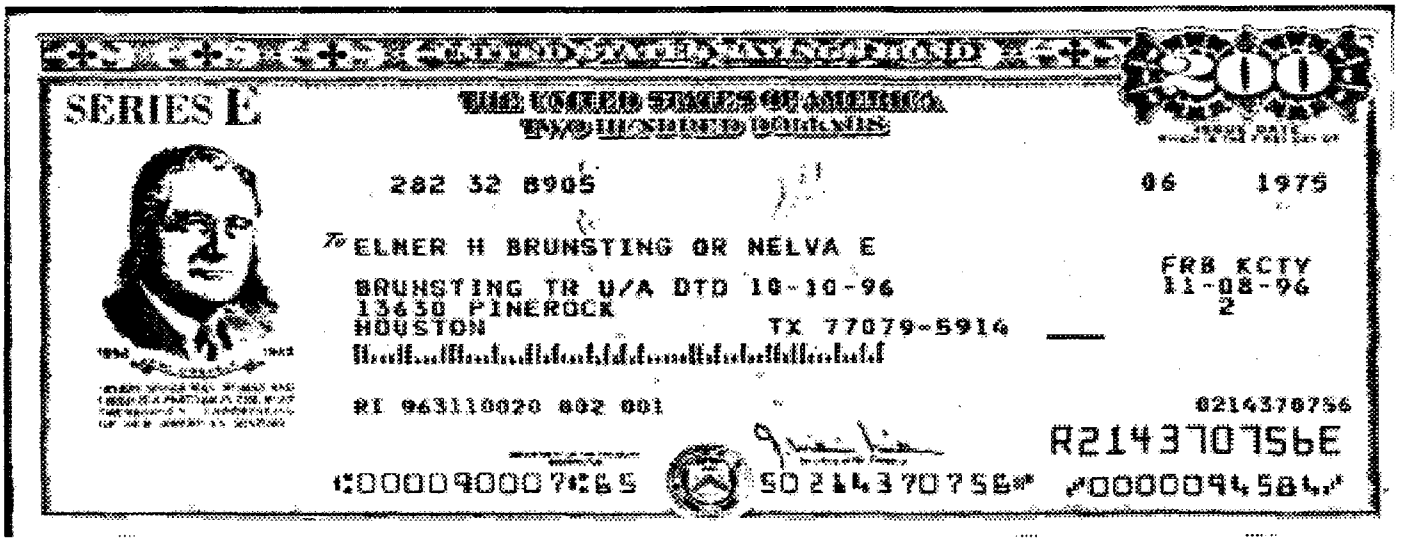
Amount: $943.60
Account: 06560214370757
Bank Number: 00009000
CD Volume #:
Check Number:

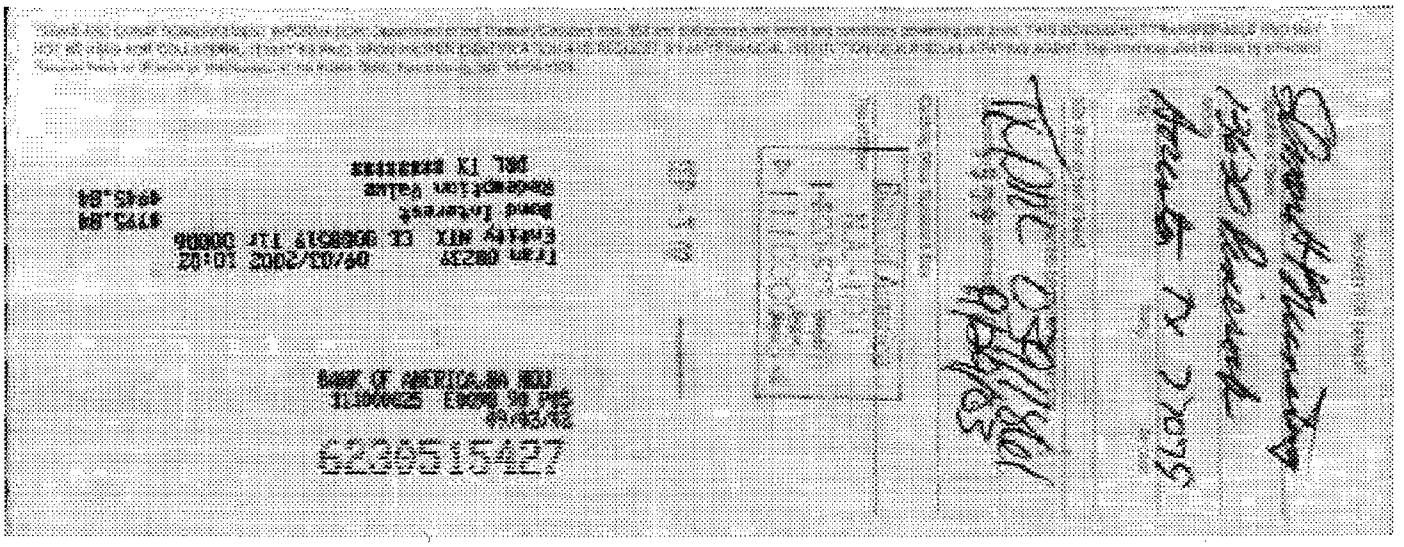




Bank #: 00009000 Acct #: 06550214370756 Check #:

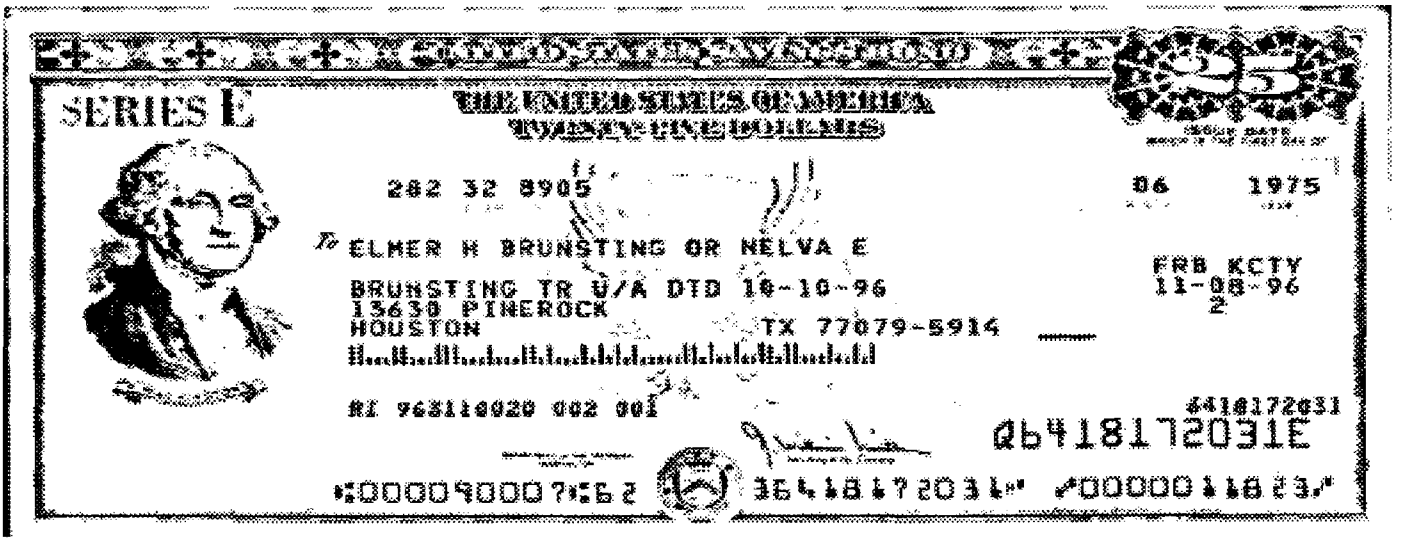
Amount: $945.84
Account: 06550214370756
Bank Number: 00009000
CD Volume #:
Check Number:

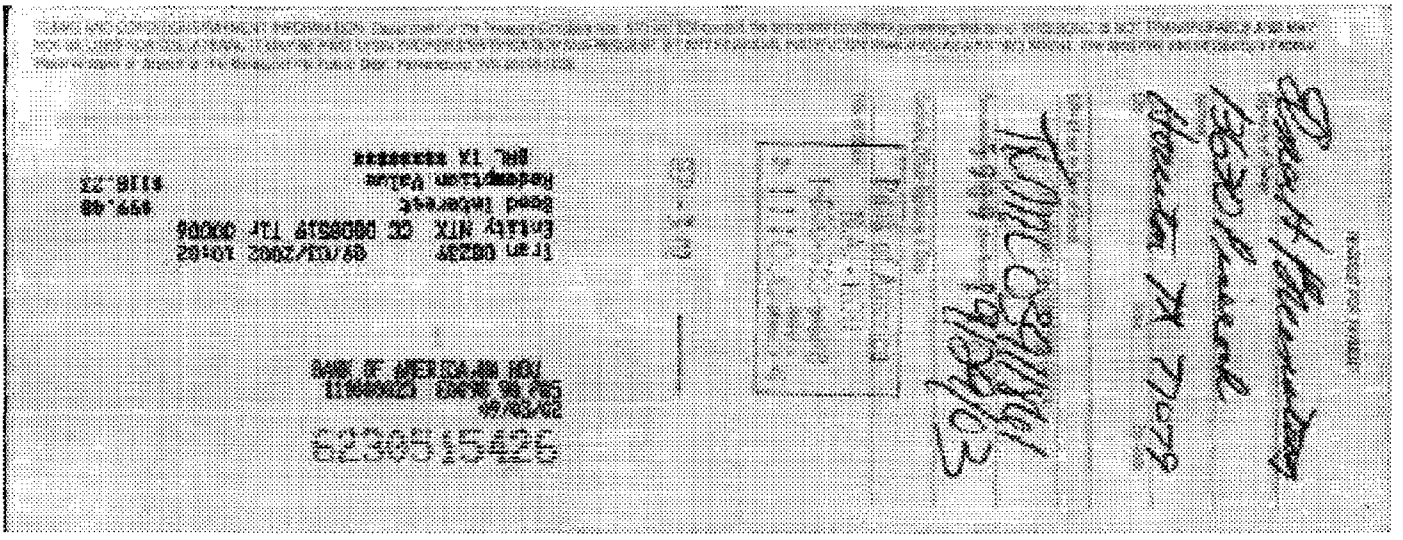




Bank #: 00009000 Acct #: 06236418172031 Check #:

Amount: $118.23
Account: 06236418172031
Bank Number: 00009000
CD Volume #:
Check Number:





The Gulf Companies

LAW DEPARTMENT

Robert F. Ochs
COUNSEL

P. O. Box 3725
Houston, TX 77253

2 Houston Center
909 Fannin Street

P4985

IRA – P11 – Primary Spouse
Secondary & Trust

709 – ~~Book~~ ~~felt~~ file form 709
Ref Tax return – claim lack of bids
getting party present. & claim
operation ~~of~~ keeping tax exempt

Sep dep & Trust
Stock – check if bids on them
Car – Secured ship – ownership

SAVINGS - STOCK BONUS PLAN OF
GULF OIL CORPORATION

EMPLOYEE NO: 114162
LOCATION NO: 150
SOC SEC NO: 282-32-8905

AUTHORIZATION FOR SETTLEMENT

IN ACCORDANCE WITH THE PROVISIONS OF THE SAVINGS-STOCK BONUS PLAN, THE SETTLEMENT SHOWN BELOW IS AUTHORIZED TO BE MADE FOR THE ACCOUNT OF E.H. BRUNSTING BY REASON OF REQUEST 12/31/80

NONE OF THIS SETTLEMENT IS TAXABLE.

			COST OF SECURITIES	CASH PAYMENT	TOTAL FUND SETTLEMENT
SAVINGS FUNDS:					
1980 TERM-	28 BONDS	176 UNITS	2,693.75	11.65	2,705.40
STOCK BONUS FUNDS:					
LONG TERM-	SHARES @	$.000			
LONG TERM SAVINGS FUNDS:					
OPTION 1-	SHARES @	$.000			
OPTION 2					
TOTAL SETTLEMENT UNDER ALL FUNDS:					
28 BONDS	SHARES		2,693.75	11.65	2,705.40

CHECK DATE 03/19/81 , NUMBER 167786, PAYEE E. H. BRUNSTING

BENEFITS COMMITTEE

DATE MARCH 19, 1981

BY PHILIP E. LININER
SECRETARY

P4987

17-20360.1293

BRUNSTING001020

Bank of America

BOND INFORMATION

PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2001/05 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 = I BONDS

# OF BONDS	SERIES 1,2,3,4	FACE VALUE	ISSUE YYYY/MO	PER BOND REDEMP. VAL	PER BOND INT EARNED	TOTALS REDEMP. VAL	TOTALS INT EARNED
1	1	100	1974/01	456.36	381.36	456.36	381.36

4/29/mo-

2001
1974
27 x 12 = 324

456.36 / 75 = 6.0848

381.36 / 75 = 5.0848

PAGE TOTAL 456.36 381.36

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

1974 Bonds

16	100	1600
3	200	600
2	25	150
5	25	125
		2475 FACE VALUE

REDEMP. 456.36 / 2475 / 100 = 11,294.91

INT. EARNED 381.36 / 2475 / 100 = 9,438.66

9,438.66
1856.25

INVESTMENT = 2475 X .75 = 1856.25

TOTAL Investment = 9,438.66 X .28 = 2642.82 INT

11,294.91 = 76.60% of Total
2642.82
8,652.09

Jan 74 27 yrs 324 mo.
Jan 01

net -

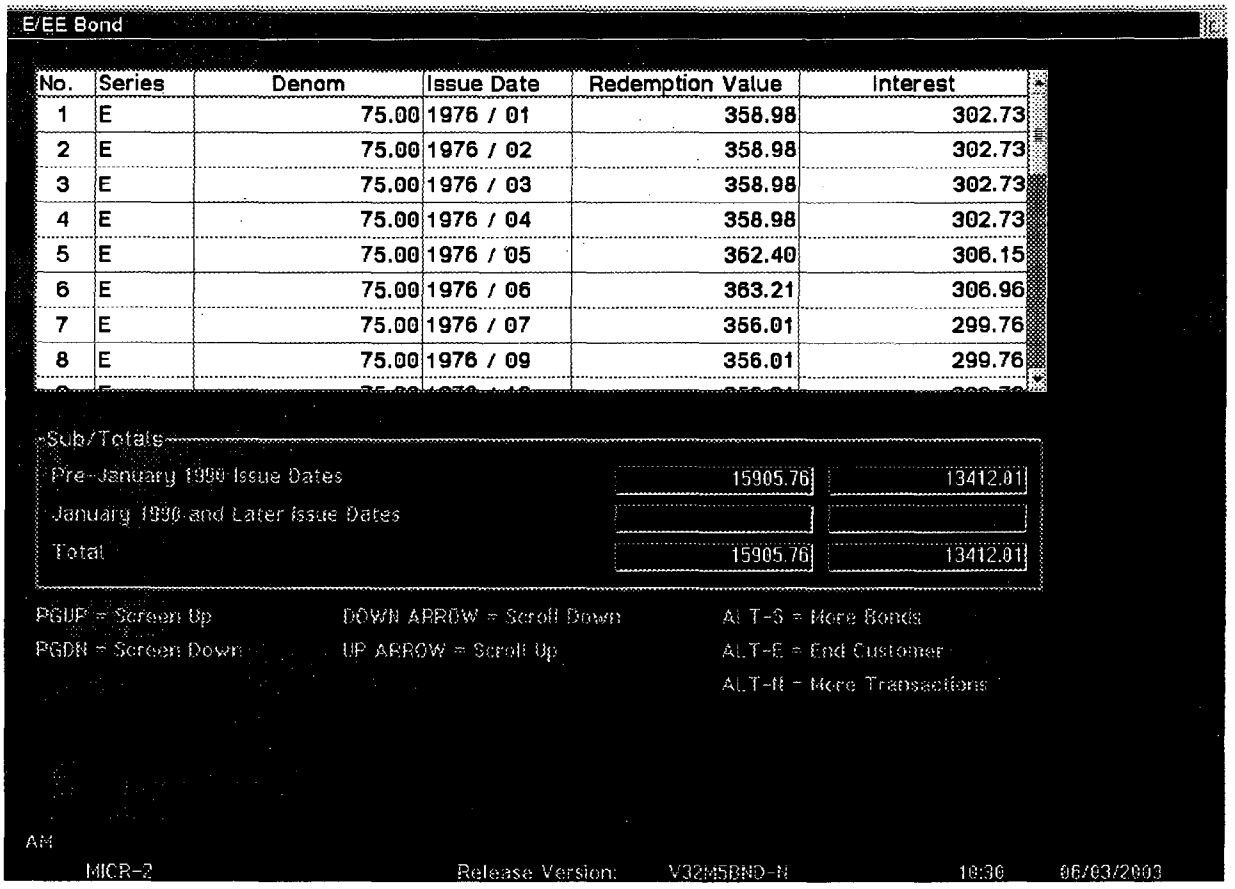
20,000 / 8,652.09 = 2.3 yrs

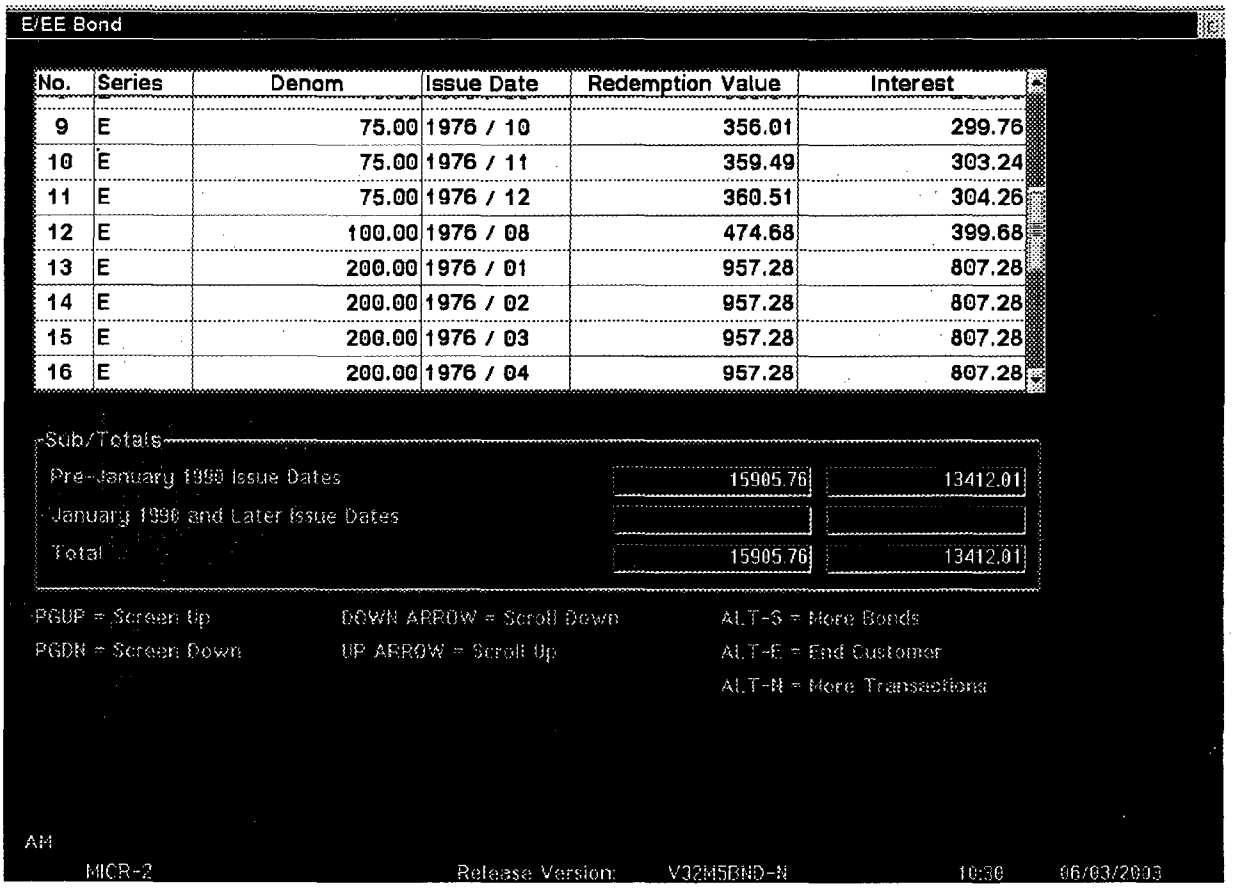
MEMORIAL HOSPITAL

P4988

17-20360.1294

BRUNSTING001021

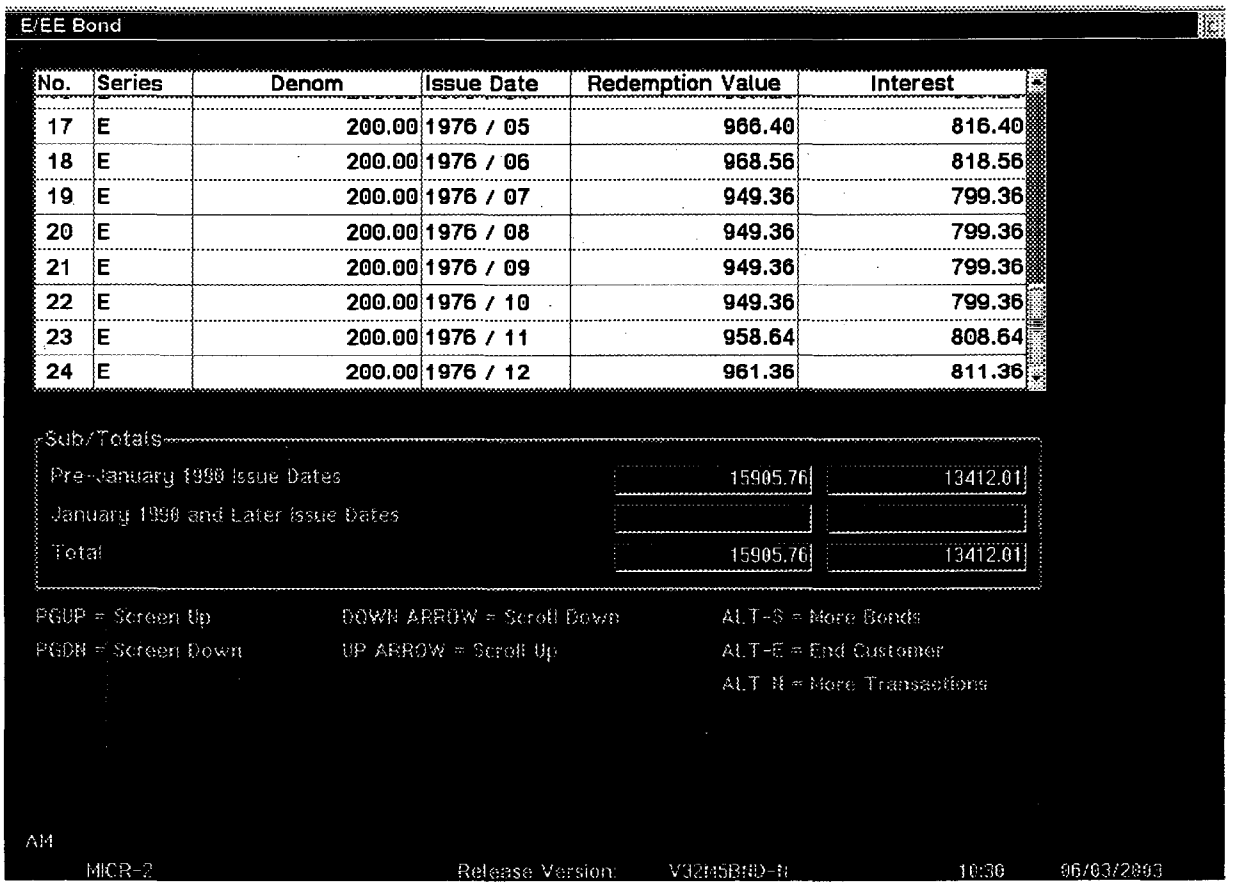

E/EE Bond
No. Series Denom Issue Date Redemption Value Interest
1 E 75.00 1976 / 01 358.98 302.73
2 E 75.00 1976 / 02 358.98 302.73
3 E 75.00 1976 / 03 358.98 302.73
4 E 75.00 1976 / 04 358.98 302.73
5 E 75.00 1976 / 05 362.40 306.15
6 E 75.00 1976 / 06 363.21 306.96
7 E 75.00 1976 / 07 356.01 299.76
8 E 75.00 1976 / 09 356.01 299.76
Sub/Totals
Pre-January 1990 Issue Dates 15905.76 13412.01
January 1990 and Later Issue Dates
Total 15905.76 13412.01
PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions
AM
MICR-2
Release Version: V32R5BND-N
10:30
06/03/2003



P4990

17-20360.1296

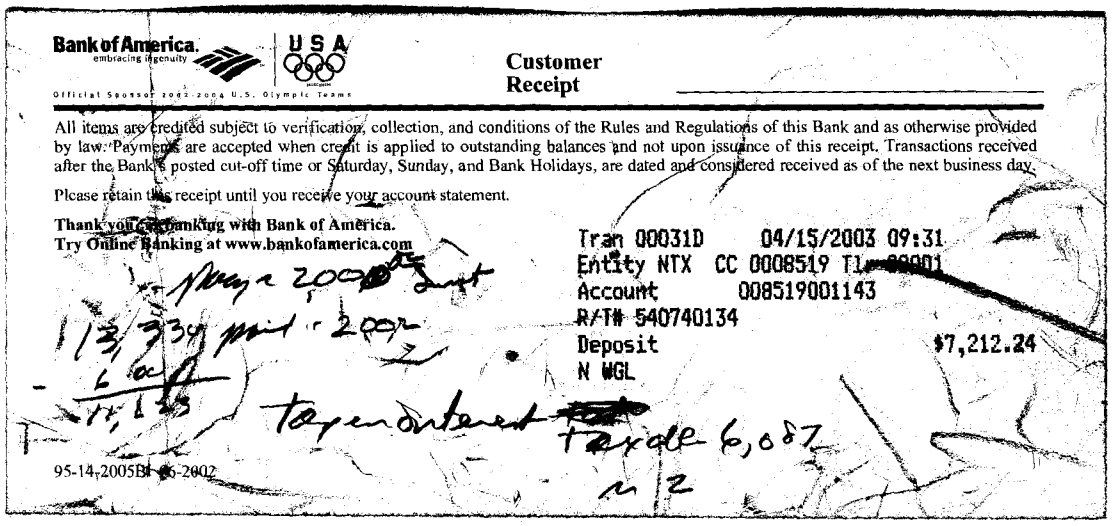
BRUNSTING001023



P4991

17-20360.1297

BRUNSTING001024



Bank of America. embracing ingenuity

USA

Official Sponsor 2002-2004 U.S. Olympic Teams

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

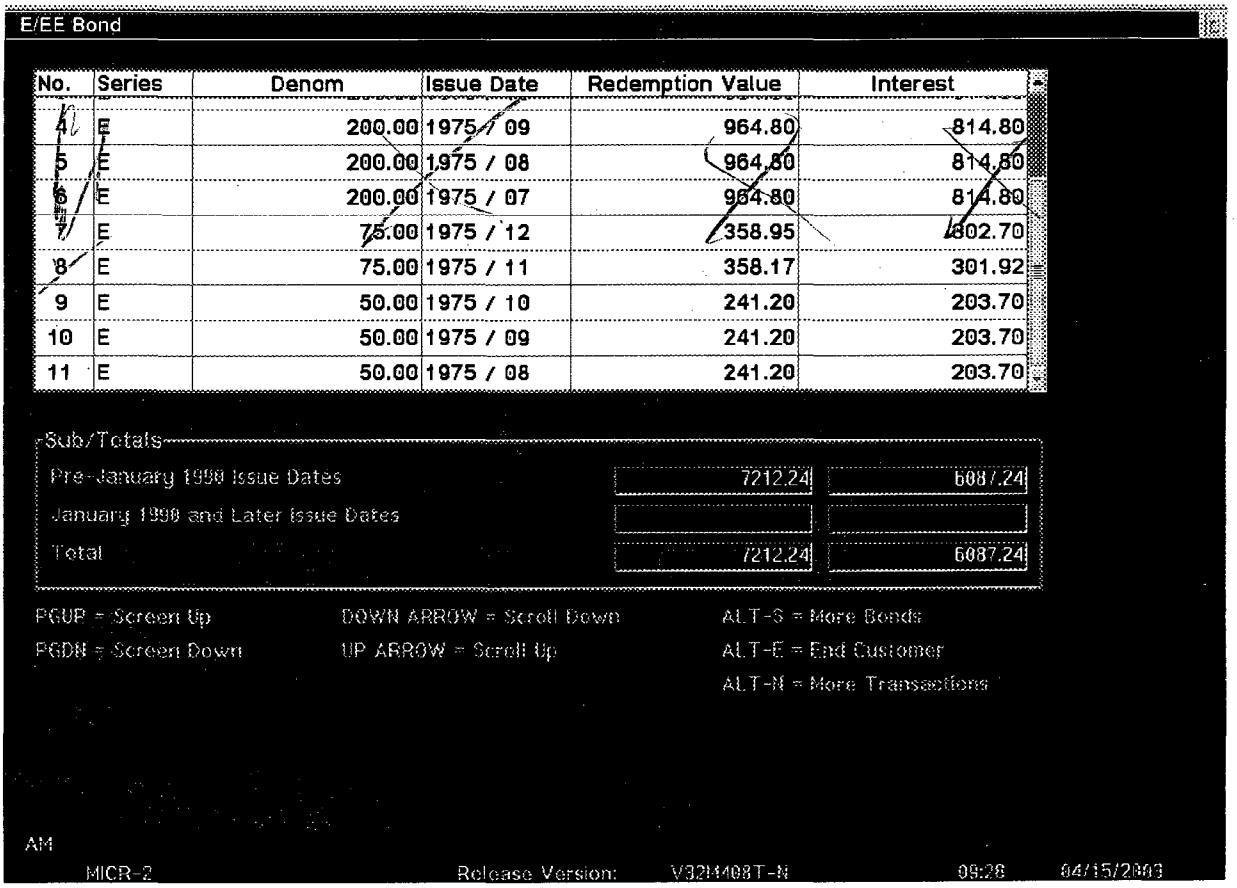
Please retain this receipt until you receive your account statement.

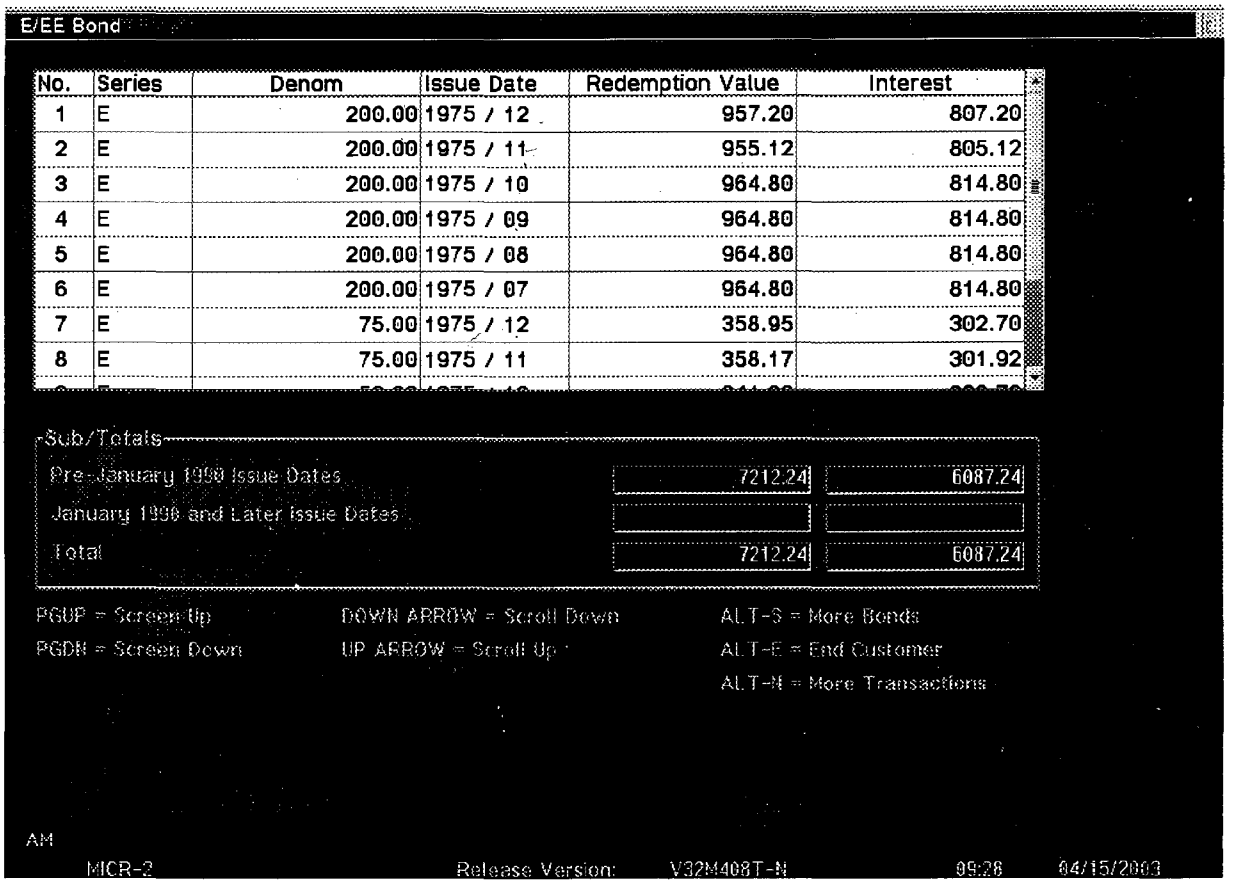
Thank you for banking with Bank of America.
Try Online Banking at www.bankofamerica.com

Tran 00031D 04/15/2003 09:31
Entity NTX CC 0008519 TL [redacted]
Account 008519001143
R/T# 540740134
Deposit $7,212.24
N WGL

95-14,2005BI 06-2002

May 2003 Sept
13,339 April 2002
6 mo
14,133
tax endorsement
Payable 6,087
m/z


E/EE Bond
No. Series Denom Issue Date Redemption Value Interest
4 E 200.00 1975 / 09 964.80 814.80
5 E 200.00 1975 / 08 964.80 814.80
6 E 200.00 1975 / 07 964.80 814.80
7 E 75.00 1975 / 12 358.95 302.70
8 E 75.00 1975 / 11 358.17 301.92
9 E 50.00 1975 / 10 241.20 203.70
10 E 50.00 1975 / 09 241.20 203.70
11 E 50.00 1975 / 08 241.20 203.70
Sub/Totals
Pre-January 1990 Issue Dates 7212.24 6087.24
January 1990 and Later Issue Dates
Total 7212.24 6087.24
PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions
AM
MICR-2
Release Version: V32H408T-N
09:28
04/15/2003


E/EE Bond
No. Series Denom Issue Date Redemption Value Interest
1 E 200.00 1975 / 12 957.20 807.20
2 E 200.00 1975 / 11 955.12 805.12
3 E 200.00 1975 / 10 964.80 814.80
4 E 200.00 1975 / 09 964.80 814.80
5 E 200.00 1975 / 08 964.80 814.80
6 E 200.00 1975 / 07 964.80 814.80
7 E 75.00 1975 / 12 358.95 302.70
8 E 75.00 1975 / 11 358.17 301.92
Sub/Totals
Pre-January 1990 Issue Dates 7212.24 6087.24
January 1990 and Later Issue Dates
Total 7212.24 6087.24
PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions
AM
MICR-2
Release Version: V32M408T-N
09:26
04/15/2003

Interest Paid every 6 mo. So turn in on Anniversary or 6 mo later.

INTEREST RATES FOR SERIES HH AND H SAVINGS BONDS
(Table good for March 1997 only)

Issue Date	Original Maturity Period	Interest Through Current Maturity Period[1]	Date Next Extended Maturity Period Begins	Life of Bond
SERIES HH				
Mar. 1993-Mar. 1997	10 yrs.	4.0	Mar. 2003-Mar. 2007	20 yrs.
Apr. 1987-Feb. 1993	10 yrs.	6.0	Apr. 1997-Feb. 2003	20 yrs.
Mar. 1983-Mar. 1987	10 yrs.	4.0	[2]	20 yrs.
Jan. 1980-Feb. 1983	10 yrs.	6.0	[2]	20 yrs.
SERIES H				
Apr. 1977-Dec. 1979	10 yrs.	6.0	Apr. 1997-Dec. 1999	30 yrs.
Mar. 1973-Mar. 1977	10 yrs.	4.0	[2]	30 yrs.
Apr. 1967-Feb. 1973	10 yrs.	6.0	[2]	30 yrs.
Feb. 1957-Mar. 1967		Bonds reached final maturity at		30 yrs.
June 1952-Jan. 1957	9 yrs,8mos.	Bonds reached final maturity at		29 yrs,8mos.

[1] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% rate.

[2] Bonds issued during this period are in their last extended maturity period.

P4995

GUARANTEED MINIMUM RATES FOR SERIES EE AND E SAVINGS BONDS AND U.S. SAVINGS NOTES ISSUED BEFORE MAY 1, 1995[1]

(Table good for March 1997 only)

Issue Date	Original Maturity Period	Guaranteed Through Current Maturity Period[2]	Date Next Extended Maturity Period Begins	Life of Bond
SERIES EE				
Mar. 1993-Apr. 1995	18 yrs.	4.0	Mar. 2011-Apr. 2013	30 yrs.
Nov. 1986-Feb. 1993	12 yrs.	6.0	Nov. 1998-Feb. 2005	30 yrs.
Mar. 1983-Oct. 1986	10 yrs.	4.0	Mar. 2003-Oct. 2006	30 yrs.
Nov. 1982-Feb. 1983	10 yrs.	6.0	Nov. 2002-Feb. 2003	30 yrs.
May 1981-Oct. 1982	8 yrs.	6.0	May 1999-Oct. 2000	30 yrs.
Nov. 1980-Apr. 1981	9 yrs.	6.0	Nov. 1999-Apr. 2000	30 yrs.
Jan. 1980-Oct. 1980	11 yrs.	6.0	Jan. 2001-Oct. 2001	30 yrs.
SERIES E				
Mar. 1978-June 1980	5 yrs.	4.0	Mar. 2003-June 2005	30 yrs.
Dec. 1973-Feb. 1978	5 yrs.	6.0	Dec. 1998-Feb. 2003	30 yrs.
June 1971-Nov. 1973	5 yrs.10 mos.	6.0	Apr. 1997-Sep. 1999	30 yrs.
June 1969-May 1971	5 yrs.10 mos.	4.0	[3]	30 yrs.
Apr. 1967-May 1969	7 yrs.	4.0	[3]	30 yrs.
Dec. 1965-Mar. 1967		Bonds reached final maturity at		30 yrs.
June 1965-Nov. 1965	7 yrs. 9 mos.	4.0	Mar. 2003-Aug. 2003	40 yrs.
July 1959-May 1965	7 yrs. 9 mos.	6.0	Apr. 1997-Feb. 2003	40 yrs.
June 1959-June 1959	7 yrs. 9 mos.	4.0	[3]	40 yrs.
May 1958-May 1959	8 yrs.11 mos.	6.0	Apr. 1997-Apr. 1998	40 yrs.
Apr. 1957-Apr. 1958	8 yrs.11 mos.	4.0	[3]	40 yrs.
May 1941-Mar. 1957		Bonds reached final maturity at		40 yrs.
SAVINGS NOTES				
Sep. 1968-Oct. 1970	4 yrs. 6 mos.	4.0	[3]	30 yrs.
May 1967-Aug. 1968	4 yrs. 6 mos.	6.0	[3]	30 yrs.

[1] Bonds issued on or after May 1, 1995 earn interest under a market-based structure.

[2] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a guaranteed minimum rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% minimum rate. Investors should remember that this table shows minimum rates only. Actual bond yields may be different because bonds earn market-based rates.

[3] Bonds issued during this period are in their last extended maturity period.

INTEREST RATES FOR SERIES HH AND H SAVINGS BONDS
(Table good for April 1997 only)

Issue Date	Original Maturity Period	Interest Through Current Maturity Period[1]	Date Next Extended Maturity Period Begins	Life of Bond
SERIES HH				
Mar. 1993-Apr. 1997	10 yrs.	4.0	Mar. 2003-Apr. 2007	20 yrs.
May 1987-Feb. 1993	10 yrs.	6.0	May 1997-Feb. 2003	20 yrs.
Mar. 1983-Apr. 1987	10 yrs.	4.0	[2]	20 yrs.
Jan. 1980-Feb. 1983	10 yrs.	6.0	[2]	20 yrs.
SERIES H				
May 1977-Dec. 1979	10 yrs.	6.0	May 1997-Dec. 1999	30 yrs.
Mar. 1973-Apr. 1977	10 yrs.	4.0	[2]	30 yrs.
May 1967-Feb. 1973	10 yrs.	6.0	[2]	30 yrs.
Feb. 1957-Apr. 1967		Bonds reached final maturity at		30 yrs.
June 1952-Jan. 1957	9 yrs,8mos.	Bonds reached final maturity at		29 yrs,8mos.

[1] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% rate.

[2] Bonds issued during this period are in their last extended maturity period.

GUARANTEED MINIMUM RATES FOR SERIES EE AND E SAVINGS BONDS AND U.S. SAVINGS NOTES ISSUED BEFORE MAY 1, 1995[1]

(Table good for April 1997 only)

Issue Date	Original Maturity Period	Guaranteed Through Current Maturity Period[2]	Date Next Extended Maturity Period Begins	Life of Bond
SERIES EE				
Mar. 1993-Apr. 1995	18 yrs.	4.0	Mar. 2011-Apr. 2013	30 yrs.
Nov. 1986-Feb. 1993	12 yrs.	6.0	Nov. 1998-Feb. 2005	30 yrs.
Mar. 1983-Oct. 1986	10 yrs.	4.0	Mar. 2003-Oct. 2006	30 yrs.
Nov. 1982-Feb. 1983	10 yrs.	6.0	Nov. 2002-Feb. 2003	30 yrs.
May 1981-Oct. 1982	8 yrs.	6.0	May 1999-Oct. 2000	30 yrs.
Nov. 1980-Apr. 1981	9 yrs.	6.0	Nov. 1999-Apr. 2000	30 yrs.
Jan. 1980-Oct. 1980	11 yrs.	6.0	Jan. 2001-Oct. 2001	30 yrs.
SERIES E				
Mar. 1978-June 1980	5 yrs.	4.0	Mar. 2003-June 2005	30 yrs.
Dec. 1973-Feb. 1978	5 yrs.	6.0	Dec. 1998-Feb. 2003	30 yrs.
July 1971-Nov. 1973	5 yrs.10 mos.	6.0	May 1997-Sep. 1999	30 yrs.
June 1969-June 1971	5 yrs.10 mos.	4.0	[3]	30 yrs.
May 1967-May 1969	7 yrs.	4.0	[3]	30 yrs.
Dec. 1965-Apr. 1967		Bonds reached final maturity at		30 yrs.
June 1965-Nov. 1965	7 yrs. 9 mos.	4.0	Mar. 2003-Aug. 2003	40 yrs.
Aug. 1959-May 1965	7 yrs. 9 mos.	6.0	May 1997-Feb. 2003	40 yrs.
June 1959-July 1959	7 yrs. 9 mos.	4.0	[3]	40 yrs.
June 1958-May 1959	8 yrs.11 mos.	6.0	May 1997-Apr. 1998	40 yrs.
May 1957-May 1958	8 yrs.11 mos.	4.0	[3]	40 yrs.
May 1941-Apr. 1957		Bonds reached final maturity at		40 yrs.
SAVINGS NOTES				
Sep. 1968-Oct. 1970	4 yrs. 6 mos.	4.0	[3]	30 yrs.
May 1967-Aug. 1968	4 yrs. 6 mos.	6.0	[3]	30 yrs.

[1] Bonds issued on or after May 1, 1995 earn interest under a market-based structure.

[2] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a guaranteed minimum rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% minimum rate. Investors should remember that this table shows minimum rates only. Actual bond yields may be different because bonds earn market-based rates.

[3] Bonds issued during this period are in their last extended maturity period.

Minneapolis Minn.
1-800-553-2663

Toll free number for Federal Reserve Bank in K.C. ~~1-800-333-2919~~.

United States Savings Bonds on hand:-

Series E - 1977 - all months - Expire 2007
$25-100-200 denomination

Series EE - 1978 - January - one $100 — Cashed www Treas Direct.
one $200 - Expire 2008

Series HH - 1988 - Nov. only $1000 - 2 bonds - Expire 2008 ?

Series EE - 1981-From February to Dec. Expire 2011
All denominations

Series EE - 1982 - all months - up to $200 - Expire 2012

Series EE - 1983 -January through July - Expire - 2013

KLM
1-800-374-7747
Departure

Air France
Phil

P5000

17-20360.1306
BRUNSTING001033

Exhibit 20

Brad Featherston December 4, 2014 email re permission to cash EE bonds and deposit the funds

Brad's December 14, 2014 email received from Drina on March 28, 2015!

"To save all of our clients' the time and expense, please respond to this email with "Agreed" and your electronic signature, indicating your agreement that Anita may cash the listed bonds, deposit the proceeds into the Decedent's Trust BOA account, and then disburse 50% or the proceeds into the Survivor's Trust BOA account. Anita will supplement her production with such pape1work showing these transactions. This agreement is without prejudice to reallocating these funds if it is later determined that such bonds were not community property or should have some other allocation under the trust instruments. Very Truly Yours, Bradley E. Featherston The Mendel Law Firm, L.P. 115 5 Dairy Ashford, Ste 1 04 Houston, TX 77079 Tel: (281)759-3213 Fax: (281)759-3214 brad@mendellawfirm.com"

Exhibit 21

Plaintiff Curtis Correspondence with US Treasury re; EE bonds

Can I find out if an EE/E Bond has already been redeemed?

If you have the serial numbers for EE/E Bonds, we can look up the status for you. If you are the owner or co-owner of the bonds, send a signed request to the address below. Be sure to include the serial numbers of the bonds you are asking about.

If the owner or both co-owners have died, you must provide proof such as a copy of the death certificate for each deceased person, with your letter.

Send your letter to:

Bureau of the Fiscal Service
P.O. Box 7012
Parkersburg, WV 26106-7012

Other written inquiries can be sent to that address. Any information you have about the bonds should be included.

28-36

NV

TreasuryDirect

Redeeming (Cashing In) EE/E Savings Bonds

On this page:

When can I redeem my EE/E Bonds?
What are my EE/E Bonds worth?
How do I redeem my EE/E Bonds?
How do I authorize an attorney-in-fact to redeem my bonds?
How much can I redeem at one time?
What will I need to redeem a paper bond?
Will I get a form for my taxes?
Can I find out if an EE/E Bond has already been redeemed?

When can I redeem my EE/E Bonds?

After they are 12 months old.

If you redeem an EE Bond before it is five years old, you will lose the last three months of interest.

EE Bonds earn interest for 30 years, so the longer you hold on to the bond (up to 30 years), the more it is worth.

If you've been affected by a disaster, special provisions may apply.

All E bonds and some EE bonds have stopped earning interest and should be redeemed.

What are my EE/E Bonds worth?

Use the Savings Bond Calculator.

Note: Savings bonds cannot be transferred. If you find a bond that belongs to someone else or buy a bond on an online auction site, you cannot redeem it. (If you inherit a bond through the death of the bond owner, see Death of a Savings Bond Owner.)

How do I redeem my EE/E Bonds?

Electronic bonds	Log in to TreasuryDirect and follow the directions there. The cash amount can be credited to your checking or savings account within two business days of the redemption date.
Paper bonds	You can cash paper EE/E Bonds at many local financial institutions. We don't keep a list of banks that redeem bonds, so check with banks in your area. More information for special situations: Redeeming Bonds Outside the United States and Redeeming a Young Child's Bond.

How do I authorize an attorney-in-fact to redeem my bonds?

For instructions, please see publication PD F 4105, "Power of Attorney: United States Savings Bonds & Notes."

How much can I redeem at one time?

Electronic bonds in your TreasuryDirect account	No limit
Paper bonds up to $1,000 (redemption value)	With just the evidence described in the next section, "What will I need to redeem a paper bond?"
Paper bonds -- $1,000 or more (redemption value)	As described in the next section "What will I need to redeem a paper bond?" Alternatively, you can: Have a certifying officer at a bank where you have an account certify your signature in each request for payment on the back of each bond. Provide your Social Security Number. Mail the bonds to the Treasury Retail Securities Site.

What will I need to redeem a paper bond?

Before taking in the bonds to redeem them, it's usually a good idea to check with the financial institution to find out what identification and other documents you'll need. When you present your paper bonds, you'll be asked to show your identity. You can do this by:

being a customer with an active account open for at least 6 months at the financial institution that will be paying the bonds, or

presenting acceptable identification such as a valid driver's license if the redemption value of the bonds is less than $1,000.

If you are not listed as the owner or co-owner on the bond, you'll have to show that you are entitled to cash in the bond.

Will I get a form for my taxes?

Yes. IRS Form 1099-INT is provided for all redeemed bonds. The form may be available when you redeem your bond or after the end of the year.

Electronic bonds	Log in to TreasuryDirect and go to ManageDirect. Form 1099-INT is one of the links on the ManageDirect page.
Paper bonds	The financial institution where you redeemed the bond will mail the form to the address on record for the bond owner. (Typically, this mailing takes place after the end of the year in which the bond is redeemed.)

Tax Considerations for EE/E Bonds

Translate

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

September 13, 2014

Bureau of the Fiscal Service
P.O. Box 7012
Parkersburg, WV 26106-7012

RE: EE/HH Bond Status Request

To Whom It May Concern:

My parents, Elmer H. and Nelva E. Brunsting, are both deceased. Their estate plan referenced EE bonds, and their financial records contained bond inventories and other bond related transaction records for both EE and HH bonds.

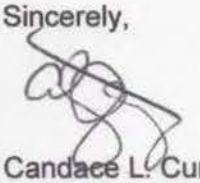
I have been unable to locate any of the bonds and it is unknown whether all of them had been cashed in before their demise.

I have enclosed copies of the death certificates, and a complete inventory of the bonds as of October 21, 1996.

If possible I would like to obtain a complete printout of transactions related to my parents' EE and HH bond accounts. If this information is not available, please provide the status of any bonds purchased starting in January 1981.

Please feel free to contact me if you have any questions or need further information.

Sincerely,



Candace L. Curtis

enclosures

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES
VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
APR 28 2009

STATE OF TEXAS — **CERTIFICATE OF DEATH** — **STATE FILE NUMBER 142-09-043770**

1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last): ELMER H. BRUNSTING	(Maiden)			2. DATE OF DEATH - ACTUAL OR PRESUMED: 04/01/2009	
3. SEX: MALE	4. DATE OF BIRTH: 09/29/1921	5. AGE-Last Birthday (Years): 87	IF UNDER 1 YR. Mo / Days	IF UNDER 1 DAY Hours / Min	6. BIRTHPLACE (City & State or Foreign Country): HULL, IA
7. SOCIAL SECURITY NUMBER: 282-32-8905	8. MARITAL STATUS AT TIME OF DEATH: ☒ Married ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown			9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage): NELVA RENSINK	
10a. RESIDENCE STREET ADDRESS: 13630 PINEROCK			10b. APT. NO:	10c. CITY OR TOWN: HOUSTON	
10d. COUNTY: HARRIS	10e. STATE: TEXAS	10f. ZIP CODE: 77079	10g. INSIDE CITY LIMITS? ☒ Yes ☐ No		
11. FATHER'S NAME: LUKE BRUNSTING	12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE: GERTUDE RIKKERS				

13. PLACE OF DEATH (CHECK ONLY ONE)

IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice Facility ☐ Nursing Home ☒ Decedent's Home ☐ Other (Specify)

14. COUNTY OF DEATH: HARRIS	15. CITY/TOWN, ZIP (IF OUTSIDE CITY LIMITS, GIVE PRECINCT NO.): HOUSTON, 77079	16. FACILITY NAME (If not institution, give street address): 13630 PINEROCK
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED: NELVA BRUNSTING - WIFE	18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code): 13630 PINEROCK, HOUSTON, TX 77079	

19. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☒ Entombment ☐ Removal from state ☒ Other (Specify)	20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH: MARICELLA JIRON ,BY ELECTRONIC SIGNATURE - 113462	21. ☐ Unknown; Section: 211-O; Block: ; Lot: DD LC; Space: 54-F
22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place): MEMORIAL OAKS CEMETERY	23. LOCATION (City/Town, and State): HOUSTON, TX	
24. NAME OF FUNERAL FACILITY: MEMORIAL OAKS FUNERAL HOME	25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code): 13001 KATY FREEWAY, HOUSTON, TX 77079	

26. CERTIFIER (Check only one)
☒ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.

27. SIGNATURE OF CERTIFIER: CYNTHIA ZINNER , BY ELECTRONIC SIGNATURE	28. DATE CERTIFIED (Mo/Day/Yr): 04/10/2009	29. LICENSE NUMBER: M2509	30. TIME OF DEATH (Actual or presumed): 09:30 AM
31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code): CYNTHIA ZINNER 1880 SOUTH DAIRY ASHFORD STE # 330, HOUSTON, TX 77077			32. TITLE OF CERTIFIER: MD

CAUSE OF DEATH

33. PART 1. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH.

		Approximate Interval Onset to death
IMMEDIATE CAUSE (Final disease or condition resulting in death) →	a. DEMENTIA, LIKELY VASCULAR TYPE	3 YEARS
Due to (or as a consequence of):		
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST	b.	
Due to (or as a consequence of):		
	c.	
Due to (or as a consequence of):		
	d.	

PART 2. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I.

CHRONIC LYMPHOCYTIC LEUKEMIA, CORONARY ARTERY DISEASE, REMOTE PROSTATE CANCER, HYPERLIPIDEMIA

34. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No

36. MANNER OF DEATH: ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined	37. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☒ No ☐ Probably ☐ Unknown	38. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year	39. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)

40a. DATE OF INJURY (Mo/Day/Yr)	40b. TIME OF INJURY	40c. INJURY AT WORK? ☐ Yes ☐ No	40d. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area)	
40e. LOCATION (Street and Number, City, State, Zip Code)				40f. COUNTY OF INJURY

41. DESCRIBE HOW INJURY OCCURRED

42a. REGISTRAR FILE NO: 0206214	42b. DATE RECEIVED BY LOCAL REGISTRAR: 04/28/2009	42c. REGISTRAR: REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED

EDR NUMBER 000000554490

AME

WARNING: The penalty for knowingly making a false statement in this form can be 2-10 years in prison and a fine up to $10,000. (Health and Safety Code, Sec. 195, 1999)

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS UNIT

VS-112 REV 12/2006

Q00269576

This is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 191.051, Health and Safety Code.

ISSUED MAR 10 2011

Geraldine R. Harris

GERALDINE R. HARRIS
STATE REGISTRAR

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

17-20360.1313

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES
VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
NOV 17 2011

STATE OF TEXAS — **CERTIFICATE OF DEATH** — **STATE FILE NUMBER** 142-11-142463

1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last)		(Maiden)	2. DATE OF DEATH (ACTUAL OR PRESUMED)	
NELVA E. BRUNSTING		RENSINK	11/11/2011	
3. SEX	4. DATE OF BIRTH	5. AGE-Last Birthday (Years)	IF UNDER 1 YR. Mo / Days	IF UNDER 1 DAY Hours / Min	6. BIRTHPLACE (City & State or Foreign Country)
FEMALE	10/08/1926	85			SHELDON, IA
7. SOCIAL SECURITY NUMBER	8. MARITAL STATUS AT TIME OF DEATH			9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage)	
481-30-4685	☒ Widowed ☐ Divorced ☐ Never Married ☐ Married ☐ Unknown				
10a. RESIDENCE STREET ADDRESS			10b. APT. NO.	10c. CITY OR TOWN	
13630 PINEROCK LANE				HOUSTON	TX
10d. COUNTY	10e. STATE	10f. ZIP CODE	10g. INSIDE CITY LIMITS?		
HARRIS	TEXAS	77079	☒ Yes ☐ No		
11. FATHER'S NAME		12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE			
SYLVESTER RENSINK		HARRIET KOOLBECK			

13. PLACE OF DEATH (CHECK ONLY ONE)

IF DEATH OCCURRED IN A HOSPITAL: ☒ Inpatient ☐ ER/Outpatient ☐ DOA
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice Facility ☐ Nursing Home ☐ Decedent's Home ☐ Other (Specify)

14. COUNTY OF DEATH	15. CITY/TOWN, ZIP OF OUTSIDE CITY LIMITS (GIVE PRECINCT NO.)	16. FACILITY NAME (If not institution, give street address)
HARRIS	HOUSTON, 77055	SELECT SPECIALTY HOSPITAL - HOUSTON WEST
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED	18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code)	
CAROL BRUNSTING - DAUGHTER	5822 JASON ST., HOUSTON, TX 77074	

19. METHOD OF DISPOSITION	20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH	21. ☐ Unknown
☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)	ARACELI J GALINDO ,BY ELECTRONIC SIGNATURE - 114721	Section 314 Block Lot 94 Space 7

22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)	23. LOCATION (City/Town, and State)
MEMORIAL OAKS CEMETERY	HOUSTON,TX
24. NAME OF FUNERAL FACILITY	25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code)
MEMORIAL OAKS FUNERAL HOME	13001 KATY FREEWAY, HOUSTON, TX 77079

26. CERTIFIER (Check only one)
☒ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.

27. SIGNATURE OF CERTIFIER	28. DATE CERTIFIED (Mo/Day/Yr)	29. LICENSE NUMBER	30. TIME OF DEATH (Actual or presumed)
JERSON CADENAS , BY ELECTRONIC SIGNATURE	11/13/2011	N3531	04:50 PM
31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code)			32. TITLE OF CERTIFIER
JERSON CADENAS 4545 POST OAK PLACE #130, HOUSTON, TX 77027-3133			MD

33. CAUSE OF DEATH — PART 1. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH. (Approximate Interval Onset to death)

IMMEDIATE CAUSE (Final disease or condition resulting in death)
a. RESPIRATORY FAILURE
Due to (or as a consequence of):
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST
b. METASTATIC BILIARY CANCER
Due to (or as a consequence of):
c. SEVERE PROTEIN CALORIE MALNUTRITION
Due to (or as a consequence of):
d. SEPTIC SHOCK

PART 2. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART 1.
ADULT FAILURE TO THRIVE

34. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No

36. MANNER OF DEATH	37. DID TOBACCO USE CONTRIBUTE TO DEATH?	38. IF FEMALE:	39. IF TRANSPORTATION INJURY, SPECIFY:
☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined	☐ Yes ☐ No ☐ Probably ☒ Unknown	☒ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year	☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)

40a. DATE OF INJURY (Mo/Day/Yr)	40b. TIME OF INJURY	40c. INJURY AT WORK? ☐ Yes ☐ No	40d. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area)
40e. LOCATION (Street and Number, City, State, Zip Code)			40f. COUNTY OF INJURY
41. DESCRIBE HOW INJURY OCCURRED			

42a. REGISTRAR FILE NO.	42b. DATE RECEIVED BY LOCAL REGISTRAR	42c. REGISTRAR
0217344	11/17/2011	REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED

JHE

EDR NUMBER 000001046936

WARNING: The penalty for knowingly making a false statement in this form can be 2-10 years in prison and a fine up to $10,000. (Health and Safety Code, Sec. 195, 1989)

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS UNIT

VS-112 REV 1/2006

QA0024969 1

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ISSUED NOV 18 2011

Geraldine R. Harris
GERALDINE R. HARRIS
STATE REGISTRAR

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

17-20360 1314

PD F 1851
Department of the Treasury
Bureau of the Public Debt
(Revised February 1995)

OMB No. 1535-0009

REQUEST FOR REISSUE OF UNITED STATES SAVINGS BONDS/NOTES IN NAME OF TRUSTEE OR PERSONAL TRUST ESTATE

IMPORTANT: Follow instructions in filling out this form. You should be aware that the making of any false, fictitious or fraudulent claim to the United States is a crime punishable by imprisonment of not more than five years or a fine up to $250,000, or both, under 18 U.S.C. 287 and 18 U.S.C. 3571. Additionally, 31 U.S.C. 3729 provides for civil penalties for the maker of a false or fraudulent claim to the United States of an amount not less than $5,000 and not more than $10,000, plus treble the amount of the Government's damages as an additional sanction.
PRINT IN INK OR TYPE ALL INFORMATION

TO: Federal Reserve Bank

BEFORE FILLING OUT THIS FORM, READ TAX LIABILITY NOTICE ON PAGE 3
(The applicable statement(s) below MUST be completed. Failure to furnish this information could cause rejection of the transaction. See instructions.)

1. I (we) hereby request reissue of the bonds described on the reverse hereof in the form set out in item 7 below to the extent of $ 38,025 (face amount).

2. In support of this request, I (we severally) certify that the trust estate described in item 7 below is a personal trust estate as defined in item 1 of the instructions on page 3 of this form, and

a. [X] was created by ELMER H. BRUNSTING & NELVA E. BRUNSTING
(Name(s) of owner, coowner, or both coowners creating trust)

b. [ ] was created by some other person and

(i) [ ] I am (one of us is) a beneficiary of the trust.

(ii) [ ] _____, a beneficiary of the trust, is related
(Name)
to _____ as _____
(Name of owner or coowner) (Give exact relationship)

3. You must check box a. or b. (SEE "TAX LIABILITY" SECTION OF INSTRUCTIONS):

a. [X] I (we) certify that, for federal income tax purposes, I (we) will be treated as owner(s) of the portion of the trust represented by any tax-deferred accumulated interest on the surrendered bonds.

[ ] I (we) certify that, for federal income tax purposes, I (we) will not be treated as owner(s) of the portion of the trust represented by any tax-deferred accumulated interest on the surrendered bonds, and therefore, I (we) will include the tax-deferred accumulated interest in gross income for the taxable year in which the bonds are reissued to the trust. I (we) am aware that a 1099 INT will be issued and the interest will be reported to the Internal Revenue Service by the agent that processes the transactions. The interest which will be reported includes deferred interest on H/HH bonds as well as interest earned on E/EE bonds from the issue date until the date of reissue.

4. ELMER H. BRUNSTING & NELVA E. BRUNSTING is/are the trustee/co-trustees of the trust. CWB 10/27/96

5. The trust was created on OCTOBER 10, 1996
(Month/Day/Year)

6. Elmer H. Brunsting, whose Social Security Account number is 282-32-8905
(Name of coowner)
10/29/96
is the principal coowner of any bonds registered in coownership form submitted herewith. He/she is responsible for any tax liability arising from the reissue transaction requested herein. (A principal coowner is a coowner who (1) purchased the bonds with his or her own funds or (2) received them as a gift, inheritance or legacy, or as a result of judicial proceedings, and has them reissued in coownership form, provided her or she has received no contribution in money or money's worth for designating the other person as coowner on the bonds. Both registrants are considered to be coowners when bonds are registered in the form "A" or "B")

7. Form in which bonds are to be reissued. ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.
13630 PINROCK, HOUSTON TX 77079
(Address)

(Taxpayer identifying number Assigned to Trust) ___-_____ (Employer Identification Number) 282-32-8905 (Social Security Account Number)

If the new bonds are not to be delivered to address shown th[illegible] deliver them to:
ELMER H. BRUNSTING
(Name)
13630 PINROCK
(Street Address)
HOUSTON TX 77079
(City or town) (State) (ZIP Code)

OWNER AND OTHER REGISTRANTS MUST SIGN AND HAVE THEIR SIGNATURE CERTIFIED ON PAGE 2

SEE INSTRUCTIONS FOR PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

P1182

Under penalty of perjury, I, the undersigned grantor (creator) of the trust, certify that the above taxpayer identification number assigned to the trust is correct; and that I am not subject to backup withholding either (i) because I have not been notified that I am subject to backup withholding (as a result of a failure to report all interest or dividends), or (ii) because I have been notified by the Internal Revenue Service that I am no longer subject to backup withholding. I further certify that the trust estate is not subject to backup withholding for one of the aforesaid reasons. (See Item 3 of the instructions on page 3.) (If an employer identification number, i.e., 12-3456789, has been assigned to the trust estate, then the trustee must furnish an I.R.S. Form W-9.)

Elmer H Brumstring
(Signature of Owner or coowner)

13630 Pinerock Houston TX 77075
(Home Address)

282 32 -8905
(Social Security Account Number)

(713 464 0391
Daytime Telephone Number

Nelva E. Brumstring
(Signature of coowner or beneficiary)

13630 Pinerock
(Home Address)

481-30-4685
(Social Security Account Number)

(713) 464-4391
Daytime Telephone Number

I CERTIFY that ELMER H BRUMSTRING, whose identify is well-known or proved to me, personally appeared before me this 21 day of October, 19 96 at Houston TX (City or State) and signed the above request, acknowledging the same to be a free act and deed.

BANK OF AMERICA TEXAS TELLER # 001 (OFFICIAL STAMP OR SEAL) OCT 21 1996 BRANCH # 08519 TOWN & COUNTRY

(Signature and title of certifying officer)

701 Town & Country
(Address)

Houston TX 77024

I CERTIFY that NELVA E BRUMSTRING, whose identify is well-known or proved to me, personally appeared before me this 21 day of October, 19 96 at Houston TX (City or State) and signed the above request, acknowledging the same to be a free act and deed.

BANK OF AMERICA TEXAS TELLER # 001 (OFFICIAL STAMP OR SEAL) OCT 21 1996 BRANCH # 08519 TOWN & COUNTRY

(Signature and title of certifying officer)

701 Town & Country
(Address)

Houston TX 77024

RESERVED FOR IDENTIFICATION NOTATIONS

☐ Customer Account Number and Date Established:

Document(s) - Description: _____

☐ Identified by (Signature and Address): _____

FOR OFFICIAL USE ONLY

☐ This transaction was a taxable event

$ _____ was reported under _____ (Social Security Account Number) for _____ (Year).

☐ This transaction was not a taxable event. No interest was reported.

DESCRIPTION OF UNITED STATES SAVINGS BONDS PRESENTED AND SURRENDERED

ISSUE DATE	DENOMINATION (FACE AMOUNT)	SERIAL NUMBER	INSCRIPTION (Please type or print names, including middle names or initials, social security account number, if any, and addresses as inscribed on the bonds.)
ALL INFORMATION IS LISTED ON THE ATTACHED 8 PAGES			

(If space is insufficient, use sheet on page 4, sign it and refer to it above - or use PD F 3500 for this purpose.)

(2)

P1183

17-20360.1316

DESCRIPTIONS OF UNITED STATES SAVINGS BONDS PRESENTED AND SURRENDERED

ISSUE DATE	DENOMINATION	SERIAL NUMBER	INSCRIPTION
JAN 1968	25	Q2323610188E	ELMER H. BRUNSTING OR
JAN 1968	100	C488366018E	NELVA E BRUNSTING
FEB 1968	100	C488381553E	DITTO
MARCH 1968	100	C487597606E	DITTO
JULY 1968	100	C492930507E	DITTO
AUG 1968	25	Q2369597957E	DITTO
AUG 1968	100	C495526689E	DITTO
SEPT 1968	25	Q2376239798E	DITTO
SEPT 1968	100	C495554472E	DITTO
OCT 1968	25	Q2376412853E	DITTO
OCT 1968	100	C495571546E	DITTO
NOV 1968	25	Q2382934338E	DITTO
NOV 1968	100	C496529219E	DITTO
DEC 1968	100	C496545465E	DITTO
DEC 1968	25	Q2389590020E	DITTO
JAN 1969	25	Q2402769422E	ELMER H BRUNSTING
JAN 1969	100	C497448486E	NELVA E BRUNSTING
FEB 1969	25	Q2409958642E	DITTO
FEB 1969	100	C499254901E	DITTO
MARCH 1969	50	L757031560E	DITTO
MARCH 1969	100	C499266790E	DITTO
APRIL 1969	25	Q2422715395E	DITTO
APRIL 1969	100	C499274128E	DITTO
MAY 1969	50	L763056023E	DITTO
MAY1969	100	C5022244708E	DITTO
JUNE 1969	50	L766519117E	DITTO
JUNE 1969	100	C502238466E	DITTO
JULY 1969	25	Q2440232983E	DITTO
JULY 1969	100	C502260677E	DITTO
AUG 1969	50	L772779399E	DITTO
AUG 1969	100	C504859197E	DITTO
SEPT 1969	50	L775389203E	DITTO
SEPT 1969	100	C504883348E	DITTO
OCT 1969	25	Q2468249697E	DITTO
OCT 1969	100	C506399101E	DITTO
NOV 1969	50	L777324452E	DITTO
NOV 1969	100	C506442126E	DITTO
DEC 1969	25	Q2476363422E	DITTO
DEC 1969	100	C506449027E	DITTO
JAN 1970	50	L779356396E	ELMER H BRUNSTING OR
JAN 1970	100	C507351868E	NELVA E BRUNSTING
FEB 1970	25	Q2489045403E	DITTO
FEB 1970	100	C507371517E	DITTO
MARCH 1970	50	L781533895E	DITTO

17-20360 1017
BRUNSTING001713

MARCH 1970	100	C509742914E	DITTO
APRIL 1970	50	L781622843E	DITTO
APRIL 1970	100	C513299043E	DITTO
MAY 1970	50	LL781689413E	DITTO
MAY 1970	100	C513338157E	DITTO
JUNE 1970	50	L781840738E	DITTO
JUNE 1970	100	C513377785E	DITTO
JULY 1970	50	L794088310E	DITTO
JULY 1970	100	C513404100E	DITTO
AUG 1970	50	L796803115E	DITTO
AUG 1970	100	C 515732747E	DITTO
SEPT 1970	25	Q2528750393E	DITTO
SEPT 1970	100	C515801272E	DITTO
OCT 1970	50	L801969302E	DITTO
OCT 1970	100	C515833390E	DITTO
NOV 1970	50	L802022535E	DITTO
NOV 1970	100	C515886588E	DITTO
DEC 1970	50	L807326463E	DITTO
DEC 1970	100	C 515436590E	DITTO
JAN 1971	50	L807366168E	ELMER H BRUNSTING OR
JAN 1971	100	C518450821E	NELVA BRUNSTING
FEB 1971	50	L812941238E	DITTO
FEB 1971	100	C518516321E	DITTO
MARCH 1971	50	L815611153E	DITTO
MARCH1971	100	C522495921E	DITTO
APRIL 1971	50	L817774095E	DITTO
APRIL 1971	100	C523365879E	DITTO
MAY 1971	75	K14200621E	DITTO
MAY 1971	100	C523483834E	DITTO
JUNE 1971	75	K14670394E	DITTO
JUNE 1971	100	C526107354E	DITTO
JULY 1971	50	L819574435E	DITTO
JULY 1971	100	C528427319E	DITTO
AUG 1971	75	K15016278E	DITTO
AUG 1971	100	C529794380E	DITTO
SEPT 1971	50	L825480119E	DITTO
SEPT 1971	100	C529877212E	DITTO
OCT 1971	75	K15187296E	DITTO
OCT 1971	100	C529895593E	DITTO
NOV 1091	50	L835532053E	DITTO
NOV 1971	100	C531353752E	DITTO
DEC 1971	75	K16443059E	DITTO
DEC 1971	100	C534218555E	DITTO
JAN 1972	75	K16841325E	ELMER H BRUNSTING OR
JAN 1972	100	C 535345407E	NELVA E BRUNSTING
FEB 1972	50	L1002342624E	DITTO
FEB 1972	100	C536246756E	DITTO

MARCH 1972	75	K100205529E	DITTO
MARCH 1972	100	C1001140610E	DITTO
APRIL 1972	75	K100235027E	DITTO
APRIL 1972	100	C1001188897E	DITTO
MAY 1972	75	K100574825E	DITTO
MAY 1972	100	C1004287178E	DITTO
JUNE 1972	75	K100897353E	DITTO
JUNE 1972	100	C1004370151E	DITTO
JULY 1972	75	K100923508E	DITTO
JULY 1972	100	C1005971762E	DITTO
AUG 1972	75	K101226740E	DITTO
AUG 1972	100	C1007854435E	DITTO
SEPT 1972	75	K101234776E	DITTO
SEPT 1972	100	C1009583723E	DITTO
OCT 1972	75	K101497925E	DITTO
OCT 1972	100	C1013424162E	DITTO
NOV 1972	75	K101674271E	DITTO
NOV 1972	100	C1014677804E	DITTO
DEC 1972	75	K101717239E	DITTO
DEC 1972	100	C1014769185E	DITTO
JAN 1973	100	C1017412539E	ELMER H BRUNSTING OR
JAN 1973	100	C1017412540E	NELVA E BRUNSTING
FEB 1973	75	K103456625E	DITTO
FEB 9173	100	C1019165387E	DITTO
MARCH 1973	100	C1020967659E	DITTO
MARCH 1973	100	C1020967660E	DITTO
APRIL 1973	75	K103502429E	DITTO
APRIL 1973	100	C1022725346E	DITTO
MAY 1973	100	C1022743153E	DITTO
MAY 1973	100	C1022743154E	DITTO
JUNE 9173	75	K104260431E	DITTO
JUNE 1973	100	C1024190568E	DITTO
JULY 1973	100	C1025207524E	DITTO
JULY 1973	100	C1025207525E	DITTO
AUG 1973	75	K104501960E	DITTO
AUG 1973	100	C1026856168E	DITTO
SEPT1973	100	C1028489865E	DITTO
SEPT 1973	100	C1028489866E	DITTO
OCT 1973	75	K105207666E	DITTO
OCT 1973	100	C1030186694E	DITTO
NOV 1973	100	C1031889677E	DITTO
NOV 1973	100	C1031889678E	DITTO
DEC 1973	100	C1031993682E	DITTO
DEC 1973	100	C1031993683E	DITTO
JAN 1974	75	K105609333E	ELMER H BRUNSTING OR
JAN 1974	100	C1034862765E	NELVA E BRUNSTING
FEB 1974	75	K106301025E	DITTO

17-20360.1319

FEB 1974	100	C1037551320E	DITTO
MARCH 1974	100	C1039590046E	DITTO
MARCH 1974	100	C1039590047E	DITTO
APRIL 1974	100	C1039616578E	DITTO
APRIL 1974	100	C1039616579E	DITTO
MAY 1974	100	C1040575108E	DITTO
MAY 1974	100	C1040575109E	DITTO
JUNE 1094	100	C1040666253E	DITTO
JUNE 1974	100	C1040666254E	DITTO
JULY 1974	25	Q5206129943E	DITTO
JULY 1974	100	C1040699695E	DITTO
JULY 1974	100	C1040699696E	DITTO
AUG 1094	25	Q5207177764E	DITTO
AUG 1974	100	C1042675840E	DITTO
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SEPT 1974	25	Q5212656678E	DITTO
SEPT 1974	100	C1044277355E	DITTO
SEPT 1974	100	C1044277356E	DITTO
OCT 1974	24	Q5219890347E	DITTO
OCT 1974	200	R104236199E	DITTO
NOV 1974	25	Q5227328461E	DITTO
NOV 1974	200	R104238066E	DITTO
DEC 1974	200	R105532207E	DITTO
JAN 1975	200	R105534602E	ELMER H BRUNSTING OR
FEB 1975	25	Q5250876813E	NELVA E BRUNSTING
FEB 1975	200	R105537285E	DITTO
MARCH 1975	50	L1110504385E	DITTO
MARCH 1975	200	R105552232E	DITTO
APRIL 1975	50	L10655080468E	DITTO
APRIL 1975	200	R105555261E	DITTO
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MAY 1975	200	R200729202E	DITTO
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JUNE 1975	200	R200475099E	DITTO
JULY 1975	50	L2008122240E	DITTO
JULY 1975	200	R200478983E	DITTO
AUG 1975	50	L2011260401E	DITTO
AUG 1975	200	R201130474E	DITTO
SEPT 1975	50	L2019145590E	DITTO
SEPT 1975	200	R201134203E	DITTO
OCT 1975	50	L2025225306E	DITTO
OCT 1975	200	R201145065E	DITTO
NOV 1975	75	K202269628E	DITTO
NOV 1975	200	R201438781E	DITTO
DEC 1975	75	K202852678E	DITTO
DEC 1975	200	R202448340E	DITTO

JAN1976	75	K202864265E	ELMER H BRUNSTING OR
JAN 1976	200	R202451895E	NELVA E BRUNSTING
FEB 1976	75	K203112916E	DITTO
FEB 1976	200	R202690829E	DITTO
MARCH 1976	75	K203265303E	DITTO
MARCH 1976	200	R202694335E	DITTO
APRIL1976	75	K203366117E	DITTO
APRIL 1076	200	R202698397E	DITTO
MAY 1976	75	K203354323E	DITTO
MAY 1976	200	R202699682E	DITTO
JUNE 1976	75	K203364078E	DITTO
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AUG 1976	200	R203949180E	DITTO
SEPT 1976	75	K207076144E	DITTO
SEPT 1976	200	R203978493E	DITTO
OCT 1972	75	K207094581E	DITTO
OCT 1976	200	R204483052E	DITTO
NOV 1976	75	K207452453E	DITTO
NOV 1976	200	R204507335E	DITTO
DEC 1976	75	K207459456E	DITTO
DEC 1976	200	R204523975E	DITTO
JAN 1977	100	C20361322118E	ELMER H BRUSTING OR
JAN 1977	200	R204541333E	NELVA E BRUNSTING
FEB 1977	100	C2039832289E	DITTO
FEB 1977	200	R204553456E	DITTO
MARCH 1977	100	C2041431316E	DITTO
MARCH 1977	200	R204557856E	DITTO
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MAY 1977	100	C2046633576E	DITTO
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JUNE 1977	100	C2049536154E	DITTO
JUNE 1977	200	R20634880E	DITTO
JULY 1977	100	C204981455E	DITTO
JULY 1977	200	R206596261E	DITTO
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AUG 1977	200	R2060846501E	DITTO
SEPT 1977	100	C2054145624E	DITTO
SEPT 1977	200	R207208675E	DITTO
OCT 1977	100	C2058634132E	DITTO
OCT 1977	200	R207528154E	DITTO
NOV 1977	100	C2059773778E	DITTO
NOV 1977	200	R207840791E	DITTO
DEC 1977	25	Q6233839753E	DITTO
DEC 1977	100	C2061750948E	DITTO
DEC 1977	200	R207846639E	DITTO

JAN 1978	100	C2063616775E	ELMER H. BRUNSTING OR
JAN 1978	200	R208068104E	NELVA E BRUNSTING
FEB 1980	75	K221891597E	ELMER H BRUNSTING OR
FEB 1980	100	C2107430100E	NELVA E BRUNSTING
FEB 1980	200	R212872691E	DITTO
MARCH 1980	200	R212956976E	DITTO
MARCH 1980	200	R212956977E	DITTO
APRIL 1980	75	K222388747E	DITTO
APRIL 1980	100	C2108816696E	DITTO
FEB 1981	50	L50420726EE	ELMER H BRUNSTING OR
FEB 1981	75	K19777823EE	NELVA E BRUNSTING
FEB 1981	200	R7766450EE	DITTO
MARCH 1981	50	L57948286EE	DITTO
MARCH 1981	75	K19824806EE	DITTO
MARCH 1981	200	R7862790EE	DITTO
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MAY 1981	50	L66997209EE	DITTO
MAY 1981	75	K20201615EE	DITTO
MAY 1981	200	R8890396EE	DITTO
JUNE 1981	50	L67154411EE	DITTO
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JULY 1981	50	L71018815EE	DITTO
JULY 1981	100	C27478706EE	DITTO
JULY 1981	200	R9080782EE	DITTO
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NOV 1981	50	L87201014EE	DITTO
NOV 1981	75	K21962801EE	DITTO
NOV 1981	200	R10473740EE	DITTO
DEC 1981	50	L87994774EE	DITTO
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DEC 1981	200	R10720744EE	DITTO

EXHIBIT 1328
17-2036013228

JAN 1982	75	K22664763EE	ELMER H BRUNSTING OR
JAN 1982	100	C36623992EE	NELVA E BRUNSTING
JAN 1982	200	R11303467EE	DITTO
FEB 1982	50	L91576789EE	DITTO
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MAY 1982	75	K23495917EE	DITTO
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JUNE 1982	100	C41593583EE	DITTO
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AUG 1982	75	K29080326EE	DITTO
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DEC 1982	200	R13202009EE	DITTO
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JAN 1983	100	C47086584EE	NELVA E BRUNSTING
JAN 1983	200	R13214791EE	DITTO
FEB1983	50	L136290497EE	DITTO
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MARCH 1983	200	R14184718EE	DITTO
APRIL 1983	75	K39737381EE	DITTO
APRIL 1983	100	C55118367EE	DITTO
APRIL 1983	200	R14244640EE	DITTO
MAY 1983	75	K39755808EE	DITTO
MAY 1983	100	C55144028EE	DITTO

Cut on dotted line.

Instructions

1. Each Click-N-Ship® label is unique. Labels are to be used as printed and used only once. DO NOT PHOTO COPY OR ALTER LABEL.
2. Place your label so it does not wrap around the edge of the package.
3. Adhere your label to the package. A self-adhesive label is recommended. If tape or glue is used, DO NOT TAPE OVER BARCODE. Be sure all edges are secure.
4. To mail your package with PC Postage®, you may schedule a Package Pickup online, hand to your letter carrier, take to a Post Office™, or drop in a USPS collection box.
5. Mail your package on the "Ship Date" you selected when creating this label.
6. For information on insurance claims, click on "My Account" at the top of any Click-N-Ship web page and then the "How to File a Claim" link.

Click-N-Ship® Label Record

USPS TRACKING # / Insurance Number:
9405 9036 9930 0253 1601 07

Trans. #:	309929516
Print Date:	09/13/2014
Ship Date:	09/13/2014
Expected Delivery Date:	09/15/2014
Insured Value:	$1.00

Priority Mail® Postage:	$5.05
Insurance Fee:	$0.00
Total:	$5.05

From: CANDACE CURTIS
218 LANDANA ST
AMERICAN CYN CA 94503-1050

To: BUREAU OF THE FISCAL SERVICE
PO BOX 7012
PARKERSBURG WV 26106-7012

* Commercial Base Pricing Priority Mail rates apply. There is no fee for USPS Tracking™ service on Priority Mail service with use of this electronic rate shipping label. Refunds for unused postage paid labels can be requested online 30 days from the print date.

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BUREAU OF THE FISCAL SERVICE
PO BOX 2186
PARKERSBURG WV 26106

233 1 SP 0.480

October 8, 2014

CANDACE L CURTIS
218 LANDANA ST
AMERICAN CANYON CA 94503

Treasury Retail Securities

IMPORTANT INFORMATION

Thank you for your recent inquiry regarding Treasury Retail Securities. **If you are responding to our correspondence, please include this bar code sheet with your response**. Failure to include this sheet may delay the processing of your request. Please note:

- Place this bar code sheet on the top of all documents you submit.
- Mail your transaction to the address provided below using the enclosed return envelope.
- Ensure that the return address at the bottom of this sheet is visible in the envelope window.
- Make a note of the Customer Number (shown below) for all future reference or communication purposes.

For Internal purposes only

Customer#: 0001326239S

Service Request#: 1-500690063

CC5

BUREAU OF THE FISCAL SERVICE
PO BOX 2186
PARKERSBURG WV 26106

For information about Treasury Retail securities, go to:
www.treasurydirect.gov

17-20360.1325

Treasury Securities Services

October 8, 2014

Customer: 0001326239S
Elmer H. Brunsting

CANDACE L CURTIS
218 LANDANA ST
AMERICAN CANYON CA 94503

Dear Ms. Curtis:

This letter refers to your recent transaction and/or inquiry.

I am trying to get photos of paid bonds; usually we cannot get photos of any bonds that have been paid over ten years ago.

I did locate some Series EE bonds issued to Elmer H Brunsting or Nelva E Brunsting's Trust.

To proceed with the request, we will need from the successor trustee:

- A certified copy of any deceased trustee's death certificate. Death certificates must be certified or sworn to by the state or local registrar, under seal or stamp, as true and correct copies taken from the official records.

In support of the request we will need a Certificate of Trust. If this is not available or your state does not allow for one, please send a copy of the original trust agreement with amendments or relevant trust excerpts and amendments. The copy of the trust must be a true and correct copy of the original and the following pages must be included:

- The page showing the name and date of the trust (not a title or cover page).
- The page(s) identifying the acting trustee(s). If more than one acting trustee is named and each can act independently, submit that portion of the trust.
- The signature page(s).
- Any amendments to the trust that may alter the information on the pages submitted or limit the authority of the acting trustee(s) to request the transaction.

If the bond(s) are missing, we will also need:

- The person(s) entitled to complete and sign the enclosed *Claim For Lost, Stolen or Destroyed United States Savings Bonds* (PD F 1048).

We may also need information concerning the estate of the last deceased.

Please send your response in the enclosed envelope. When contacting us, please provide the customer name and reference number shown at the top of this letter as well as your daytime telephone number. Also provide your email address if you prefer contact by email.

For general questions about Treasury Securities, visit our website at www.treasurydirect.gov. If you have questions about this letter, call 304-480-7711 ext. 297414, between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time.

Sincerely,

Bureau of the Fiscal Service

Enclosure: Return Envelope

Exhibit 22

Amy June 24, 2015 answers to interrogatories and Requests for Production

GRIFFIN & MATTHEWS

Attorneys at Law
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
(281) 870-1124
(281) 870-1647 FAX

FACSIMILE TRANSMISSION

To:	Bobbie Bayless Darlene Payne Smith Bradley Featherston	**Fax:**	713.522.2218 713.658.1921 281.759.3214	**Phone:**	713.522.2224 713.752.8640 281.759.3213
From:	Neal E. Spielman	**Pages:**	29 including this cover page	**Date:**	6/24/2015
Re:	Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas				

PLEASE DELIVER AS SOON AS POSSIBLE

- Amy Brunsting's Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production (with Verification)

THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION WHICH IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE AND MAY CONTAIN INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone.

GRIFFIN & MATTHEWS
Attorneys at Law

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NEAL E. SPIELMAN
nspielman@griffinlaw.com

BEAUMONT
400 NECHES @ CROCKETT
BEAUMONT, TEXAS 77701
(409) 832-6006
FAX: (409) 832-1000

June 24, 2015

Ms. Candace Louise Curtis
218 Landana Street
American Canyon, California 94503

Via C.M.R.R.R.
7014 0150 0001 5384 0078

RE: Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas

Dear Ms. Curtis:

In accordance with the Texas Rules of Civil Procedure, enclosed please find my client's Objections, Answers and Responses to the written interrogatories and requests for production recently issued. My client's verification is also enclosed.

Very truly yours,

Griffin & Matthews

By: _____
Neal E. Spielman

NES:mf
Enclosures
cc: Ms. Bobbie G. Bayless
Bayless & Stokes
Via Facsimile: 713.522.2218

Ms. Darlene Payne Smith
Crain, Caton & James
Via Facsimile: 713.425.7945

Mr. Bradley E. Featherston
The Mendel Law Firm, L.P.
Via Facsimile: 281.759.3214

NO. 412,249-401

CARL HENRY BRUNSTING, et. al.	§	IN PROBATE COURT
	§	
v.	§	NUMBER FOUR (4) OF
	§	
ANITA KAY BRUNSTING, et. al.	§	HARRIS COUNTY, TEXAS

AMY RUTH BRUNSTING'S
OBJECTIONS, ANSWERS AND RESPONSES TO CANDACE LOUISE CURTIS'S WRITTEN INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO: Candace Louise Curtis, Pro Se, – 218 Landana Street, American Canyon, California 94503

Amy Ruth Brunsting, serves these Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production in accordance with the Texas Rules of Civil Procedure.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

ATTORNEYS FOR DEFENDANT, AMY RUTH BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 24th day of June 2015, to the following in the manner set forth below:

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
218 Landana Street
American Canyon, California 94503
Via C.M.R.R.R. 7014 0150 0001 5384 0078

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
Via Facsimile: 713.522.2218

Attorneys for Carole Ann Brunsting:

Darlene Payne Smith
Alec B. Covey
Crain, Caton & James
Five Houston Center
1401 McKinney, 17TH Floor
Houston, Texas 77010
Via Facsimile: 713.425.7945

Attorneys for Anita Kay Brunsting:

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Via Facsimile: 281.759.3214

NEAL E. SPIELMAN

OBJECTIONS, ANSWERS & RESPONSES

Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.

To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:

Interrogatory No. 1 *(Really, Interrogatories 1-4)*

(a) Regarding the Affidavit in Support of Removal of Lis Pendens, Sworn to and signed by you on March 6, 2012, at Item 5 you state:

> *"As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston."*

With respect to this statement:

i. Has a Personal Asset Trust been set up for?

1. **Candace Louise Curtis**
2. **Carole Ann Brunsting**
3. **Carl Henry Brunsting**
4. **Amy Ruth Brunsting**
5. **Anita Kay Brunsting**

If the answer to any of 1 - 5 is yes, please state when and how each personal asset trust was "set up", how and from what assets each was funded. Please explain also the dispositive provisions for the personal asset trusts and the instruments from which each article was derived. Please also explain what administrative provisions were used to "set up" the personal asset trusts and identify the instrument(s) from which those provisions were derived.

If the answer to any of 1 - 5 is no, please explain the process for the creation of the personal asset trust(s) and itemize, with a particularity, the causes for your failure to establish said trust(s).

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

(b) At item 10 you state:

"The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the Lis Pendens so the sale can be consummated, for the benefit of all of the heirs".

The house sold more than 3 years ago, what benefit has any heir received from the sale of the house?

Answer:

Objection. Respondent objects to this Request as phrased. It is vague, confusing, premature, misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The proceeds from the sale of the house have been deposited in an interest-bearing account where they will remain pending resolution of the various legal proceedings initiated by Carl and Candace

(c) At item 3 in your Affidavit in Support of Removal of Lis Pendens, dated March 6, 2012, you state:

"The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance."

With respect to this statement:

Our father died April 1, 2009. At the time of his death the named successor co-trustees, as per the 2007 Amendment, were Carl and Candace. "Our parents" removed your name as successor co-trustee with the 2007 Amendment, and my name remained as a successor co-trustee with Carl. What instruments created between the 2007 Amendment and our father's death indicate: "our parents did not feel she was competent to handle her own inheritance"?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

All of them. Taken in their totality, the documents evidence our parents changing attitudes and confidence in Candace and Carl's respective abilities to properly care for themselves, manage money, make reasonable decisions, avoid negative influences in the form of spouses and/or significant others, etc.

Interrogatory No. 2 *(Really, Interrogatories 5-8)*

In your Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, you state:

> *"AMY RUTH BRUNSTING F/F/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property."*

Section 3(A)(A) at page 5 of the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment" states:

> *A. Establishment of the Personal Asset Trust:*
>
> *A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified to be made to said beneficiary's Personal Asset Trust first occurs.*

Pursuant to Article X Section "A" of the family trust, distributions were specified to be made to the five personal asset trusts at the death of the Surviving Founder.

> *Section A. Our Beneficiaries*
>
> *Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:*

That event occurred on November 11, 2011.

(a) **What clause in what trust instrument allows the trustees to ignore the dispositive provisions of Article X (compelling establishment of personal asset trusts) and to continue acting as trustees for the Survivor's and Decedent's trusts well beyond the period of time necessary to settle those trusts?**

Answer:

Objection. Respondent objects to this Request as phrased. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Further, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

(b) **Did the trustees ever have any intention of funding individual asset trusts? If yes, when, for whom, in what proportions, and based upon what criteria?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(c) **Did the trustees ever intend to render full, true, and complete accounts? If yes, why have proper accounts not been rendered?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons. Additionally, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(d) **Which of the ten purposes for establishing personal asset trusts, expressed in the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", were considered in the decision not to express and fund personal asset trusts?**

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The document speaks for itself relative to the Trustor's intent. This notwithstanding, the Personal Asset Trusts have not been established as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and

when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

Interrogatory No. 3 *(Really, Interrogatories 9-10)*

You communicated with Frost Bank by email on January 24, 2012 "about the management of the trust accounts for my brother Carl and my sister Candy". Your email states "A copy of the trust is attached". The only attachment was the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement".

(a) **Is it your opinion that the 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" constitutes the complete trust agreement from which the personal asset trusts are to be created?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is confusing, misleading and capable of causing jury confusion. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

(b) **What was the reason why Frost Bank declined the management of the trust accounts for Carl and Candy?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is vague, confusing, misleading and capable of causing jury confusion. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

My understanding is that Frost Bank declined as a result of real property being located outside the State of Texas. Whether there were other or different reasons, I cannot say.

Interrogatory No.4 *(Really, Interrogatories 11-15)*

In 2011, you, Ann, and Jack each received distributions in the form of Exxon and Chevron securities.

(a) **Were you involved in the decision to distribute those assets? If yes, what trust distribution standard was utilized and what facts were considered in relation to those standards as that criteria relates to each of the five Brunsting beneficiaries?**

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Exxon and Chevron securities were received while my mother was still alive. They were presented as gifts. I was not involved in mother's decision.

(b) Were you aware that those distributions were not equal?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Yes, I was aware that the gift I received was not the same amount as the gifts received by Ann and Jack. However, to my knowledge, the amounts received by Ann and Jack were equal in amount to similar gifts received by mother's other grandchildren

(c) Were you aware that Carl received no stock or other assets of any kind at that time?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe this is a true statement. I believe, at or around this time, Carl was receiving monies from mother directly and/or via mother's payment of bills, invoices or other expenses.

(d) Were you involved in the decision making process in labeling those distributions as gifts?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe that any monies, securities, etc. given out by mother while she was alive were distributions; but, no, I was not involved in any "decision" of this sort.

(e) Was any specific trust property directed to be distributed by the 8/25/2010 exercise of the Article III Qualified Beneficiary Designation? If yes; what was the specific property, to who

was the specific property directed to be distributed, when, in what proportions and according to what criteria?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I was not a co-trustee until after mother died in November 2011, so I was not involved in anything that occurred up until that time, and Candace's lawsuit began approximately 3 months later. As to specific trust property and its distribution, the documents speak for themselves.

Interrogatory No. 5 *(Really, Interrogatories 16-26)*

As co-trustee, regarding the exercise of "Sole and Absolute Discretion" in recent opposition to a distribution to Candace Curtis:

(a) What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(b) What is the trustee's process for making discretionary distribution decisions?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or

obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(c) What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(d) Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, identify the controlling provisions and the instrument(s) that contain those provisions.

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(e) Does the trustee work with distribution advisors? If so, who and when? If not, why not?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> My ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(f) What types of distributions would the trustees like a beneficiary to receive?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

(g) For what purposes can the beneficiary request a distribution from the trust?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

(h) When would the trustees like distributions to be made and in what priority?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

(i) What circumstances should or should not exist prior to a distribution from "the trust"?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

(j) Who should be involved in the decision making process?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

Respondent invokes all rights and remedies associated with instances of offensive discovery abuse, including without limitation, a request for a protective order. This request is occasioned, in part, by Candace Louise Curtis' abuse of the Texas Rules of Civil Procedure and her violation of "discrete sub-part" standards and restrictions. Candace Louise Curtis has issued more interrogatories than she is permitted to issue under the Rules. Until her interrogatories are re-drafted to remedy the violation, or pending further instructions from the Court, additional objections to the remaining interrogatories are reserved, as are additional factual answers.

(l) What facts were relied upon in your determination to oppose distributions to Candace?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 6 *(Really, Interrogatories 27-29)*

On March 8, 2011, Anita sent an email to you, Candy, and Carole in which she said:

> *"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care."*

(a) Did you meet with Candace Freed to discuss any trust business prior to the death of Nelva Brunsting? If yes, provide the dates and explain the purposes for each of those meetings.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) How much were you involved with Anita's efforts to convince Nelva to alter the terms of the trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) How much was Carole involved with Anita's efforts to convince Nelva to alter the terms of the trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No.7 *(Really, Interrogatories 30-31)*

Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) Were you involved in discussions involving the creation or signing of the August 25, 2010 trust amendment instrument(s)? If yes, explain the circumstances leading up to the creation of the instrument.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 8 *(Really, Interrogatories 32-33)*

Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the December 21, 2010 instruments.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 9 *(Really, Interrogatories 34-37)*

Pursuant to the Provisions of the 2005 Restatement, Administration of the Decedent's trust in Article IX:

(a) Did Nelva have the authority to remove the trustees of the Decedent's Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Did the exercise of the Qualified Beneficiary Designation and Testamentary Power of Appointment, dated 8/25/2010, appoint specific property to any specified beneficiary or beneficiaries?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) Did the Limited Testamentary Power of Appointment, dated 812512010, direct distributions of principal of the Decedent's Trust in a manner that discharged the surviving Founder's legal obligations to any beneficiary of the Decedent's Trust? If yes, please explain with a specificity as it affects each of the five Brunsting heirs/beneficiaries.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) If Nelva discharged her legal obligations to a beneficiary of the Decedent's Trust, what beneficiary(s) and to what extent did Nelva discharge her legal obligations to those beneficiaries?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 10 *(Really, Interrogatories 38-41)*

Please refer to George Vie's July 15, 2013 letter to the Special Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, also including the $100,000.00 distribution Anita received in 2005 to pay off her house.

Your letter states that:

> *"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their m id-3 Os); and Carl's*

daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses."

Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Anita and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) **Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of intended influence addressed to the Special Master.**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules. If none say none.**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

In general the July 15, 2013 letter to the Master attempts to provide explanation for the accelerated dissipation of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity.

(c) **Were you involved in the decision making process for any of those distributions? If yes, explain.**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 11 *(Really, Interrogatories 42-56)*

Regarding the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement"

(a) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What changes to the administrative provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(e) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(f) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(g) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(h) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(i) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(j) What changes to the administrative provisions of the Survivor's Trust (Article VIII) were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(k) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(l) Has the Brunsting Family Trust ever been amended or revoked by a court of competent jurisdiction?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(m) Has the Elmer H. Brunsting Irrevocable Decedent's trust ever been amended or revoked by a court of competent jurisdiction?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(n) Was any specific trust property directed to be distributed by the 8125/2010 exercise of the Article VIII Limited Testamentary Power of Appointment? If yes, what was the specific property; to who was the specific property directed to be distributed; when, in what proportions; and, according to what criteria?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(o) What specific trust property was directed to be distributed by the 8/25/2010 exercise of the Article IX limited testamentary power? According to what standard was it to be distributed, when, how and to whom was it to be distributed?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 12 *(Really, Interrogatories 57-65)*

With respect to the August 25, 2010 QBD "Section B. Trustor's Intent in Establishing Personal Asset Trusts,"

Intention 1. To protect and conserve trust principal

EE Bonds have long been known to exist, yet have never been included in the list of assets of the trust, or accounted for by the trustees. This was brought to your attention at the hearing in connection with the Report of Master in July 2013. Anita received a letter from the Treasury dated December 4, 2014, referring to "your recent transaction and/or inquiry", which says the search "identified the unredeemed bonds described on the enclosed list". It goes on to state "The Department of the Treasury requires the properly completed forms be submitted in order to process the claims." A check with the Treasury Department gave a total value of the bonds as approximately $6,452.64. A statement at the end of the Bond List received as an attachment to the correspondence says: "***If there are any bonds marked with an asterisk, they are within one month of their final maturity and may not be reissued or replaced."** All bonds on the list are marked with an asterisk.

(a) Why was your inquiry made more than one year after you were noticed of the existence of those EE Bonds?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What claim(s), if any, were requested to be processed?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) Were the properly completed forms subsequently submitted? If no, why not? If yes, what were the results and why have the transaction records not been disclosed to Plaintiff(s)?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary

The Decedent's Trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year.

(a) Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you obtained or been given regarding income taxes paid by the trusts, if any?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

(a) In what way have you respected this intention?
Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Answer:

Intention 5 To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

(a) In what way have you considered the needs and resources of beneficiary Candace Curtis in your distribution considerations?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What facts did you rely upon in evaluating the needs and personal resources of beneficiary Candace Curtis in your distribution considerations?

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

(a) What inquiry did you make in effort to determine the existence of business ventures or start-ups that beneficiary Candace Curtis may be involved in as a part of your distribution considerations?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) In your determination not to fund individual asset trusts what facts were considered in relation to any of the remaining expressed intentions for such actions?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 13 *(Really, Interrogatories 66-69)*

The Bates stamped documents included in Plaintiffs document production P6-P155,"My Trustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

(a) Which of the eight "Do's" have you done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Which of the eight "Do's" have you not done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) Which of the nine "Do Not's" have you done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) Which of the nine "Do Not's" have you not done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 14 *(Really, Interrogatories 70-75)*

In establishing Personal Asset Trusts for the beneficiaries

(a) Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What dispositive and administrative provisions flow to the personal asset trusts from the Decedent's Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) What dispositive and administrative provisions flow to the personal asset trusts from the Survivor's Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) When the dispositive provisions of the Decedent's Trust and those of the amended Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(e) When the administrative provisions of the Decedent's Trust and those of the Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(f) Describe the steps you have taken to honor the provisions of Article X, Section B (l)(a)(i) of the Brunsting Family Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 15 *(Really, Interrogatories 76-77)*

Accounts and Accounting

(a) How can you create personal asset trusts and fulfill the purposes of the trust without a full, true, and complete statutory accounting?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) When and how did the acting trustees inform the beneficiaries regarding their beneficial interests?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

OBJECTIONS AND RESPONSES

Request for Production No. 1

Schedule F - Purports to be a partial gifting reconciliation from Elmer and Nelva Brunsting from 2001, as developed from checking transactions. Please provide any bank statements beginning January 1, 2001 through the present that have not already been provided.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 2

Please provide any Edward Jones statements beginning January 1, 2001 through the present that have not already been provided.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 3

Please provide a true and correct copy of the "Appointment of Successor Trustees" dated July 1, 2008 referenced in such instruments as the Certificates of Trust bearing Bates Stamps P6783, V&F 000004; P6784, V&F 000005 and P6785, V &F 000006.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 4

Please provide a true and correct copy of the "Agreement" signed by Nelva Brunsting establishing the rate of trustee compensation claimed in the April 2012 spreadsheets and July 2013 Master's report. Please also include a copy of any letters of notice of change in trustee compensation, along with proofs of certified mailing to beneficiaries, as required by the Texas property statutes.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 5

Please provide any and all parole evidence indicating Nelva's knowledge of and direct participation in discussions related to "changes to the trust" specifically in regard to the instruments dated August 25, 2010, and those dated December 21, 2010.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request. Further, it seeks information, which – if it exists – is in the hands of third parties over whom Respondent has no control.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 6

Please provide copies of all supporting documentation upon which 2014 taxes were calculated and paid in regard to any Brunsting related trust(s).

Response:

Materials responsive to this Request have previously been provided by Anita Brunsting directly and/or through counsel. Additional responsive materials are in the process of being accumulated and will likewise be provided by Anita Brunsting directly and/or through counsel.

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned notary, on this day personally appeared AMY RUTH BRUNSTING, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

My name is Amy Ruth Brunsting, and I am over 18 years of age, of sound mind and capable of making this verification. I have read answers to the interrogatories issued to me by Candace Louise Curtis. Unless otherwise noted in the content of the answers, the facts stated are within my personal knowledge and are true and correct.

Amy Brunsting
Printed Name: Amy Brunsting
Date: 6-19-15

Sworn to and subscribed before me by Amy Brunsting on the 19 day of June, 2015.

KIMBERLY A JOHNESE
Notary Public, State of Texas
My Commission Expires
NOVEMBER 16, 2016

Kimberly A Johnese
Notary Public in and for the State of Texas

Exhibit 23

Anita's June 4, 2015 answers to interrogatories

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, et al	§	

Anita Kay Brunsting 's Response to Candace Louise Curtis' First Written Interrogatories

Anita Kay Brunsting serves her response to Candace Louise Curtis' first written interrogatories.

Respectfully submitted,

/s/ Brad Featherston

Stephen A. Mendel (13930650)
Bradley E. Featherston (24038892)
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Houston, Texas 77079
Tel: 281-759-3213
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Counsel for Anita Kay Brunsting
In Capacities at Issue

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Candace Louis Curtis
218 Landana Street
American Canyon, CA 94503
Tel: 925-759-9020

Pro Se

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
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Attorney for Drina Brunsting,
Alleged Attorney in Fact for
Carl Brunsting

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010
O: 713-752-8640; F: 713-425-7945

Attorney for Carole Ann Brunsting

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124; F: 281-870-1647

Attorney for Amy Brunsting

via email on June 4, 2015.

/s/ Brad Featherston
_____
Bradley E. Featherston

Response to Written Interrogatories[1]

Anita Brunsting objects to Candace's interrogatories and request for production made pursuant to "fiduciary obligations." Interrogatories and request for production are exclusive to the Texas Rules of Civil Procedure and are not contemplated by the trust instruments nor any other applicable law. To the extent Candace's interrogatories and request for production are made pursuant to fiduciary obligations under the trust instruments then, pursuant to the trust, the Trustee requires that Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

---

1. In your exercise of discretion, which of the Founders' ten intended purposes and what aspects of the HEMS standard were factored into your determination to oppose a distribution to beneficiary Candace from her personal asset trust, and upon what set of facts did your determination rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, see Anita's response to Candace's request for distributions that was filed with the Court and which documents speak for themselves.

2. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Carole, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

3. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Candace, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

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[1] Candace's Interrogatories were renumbered for the convenience of the parties and the Court.

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

4. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Amy, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

5. Which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in not transferring Exxon Stock to Carl, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, presumably the inquiry relates to the time period Nelva Brunsting was alive and Nelva Brunsting did not instruct an Exxon Stock transfer to Carl.

6. What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the distribution standards are as set forth in the trust instruments, which were interpreted as written.

7. What is/was the trustee's process for making discretionary distribution decisions?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the process is as set forth in the trust instruments.

8. What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The trustee requires what the trust instruments provide.

9. Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, under which provision of what instrument(s)?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the trust instruments speak for themselves.

10. Does the trustee work with distribution advisors? If so, who and when? If not, why not?

RESPONSE: The trustee has not worked with distribution advisors. No distributions have been made since the Nelva's death due to the litigation filed by Candace and Carl.

11. When and how did the acting trustees inform the beneficiaries of their beneficial interests?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, prior to defendant's appointment as trustee, on or about October 23, 2010, Candace was informed of her beneficial interest via email. Shortly after Nelva's death in November 2011, the trustees and their counsel were in the process handling the trust affairs incident to Nelva's death. The trustees and

their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries.

12. What types of distributions would the trustees like a beneficiary to receive?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

13. For what purposes can the beneficiary request a distribution from the trust?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the beneficiary can request a distribution for the purposes contained in the trust instruments.

14. When would the trustees like distributions to be made and in what priority?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, Subject to, and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

15. What circumstances should or should not exist prior to a distribution from "the trust"?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution.

16. Who should be involved in the decision making process?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court and the parties to the litigation should be involved in the decision making process.

17. What factors does the decision-maker measure in determining the beneficiary's need for a distribution?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court would consider the factors set forth in the trusts.

18. Describe the steps you have taken to honor the provisions of Article X, Section B (1)(a)(i) of the Brunsting Family Trust?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The referenced section was superseded by Nelva and therefore, is inapplicable.

19. Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?

RESPONSE: After Nelva's death, defendant began the process of collecting assets, informing trust beneficiaries, and working the attorneys specifically referenced in such section to implement the terms of the trust instruments. The trustees and their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries. Candace then brought litigation.

20. A copy of the 8/25/2010 QBD was included in the October 23, 2010 email attachments. How did you come to be in possession of the 8/25/2010 QBD on October 23, 2010 when Nelva was the only then serving trustee?

RESPONSE: Nelva provided defendant such instrument.

21. What was your forthright explanation to Nelva regarding the changes that you planned for her to make to the trust and what were the exact changes that you intended to be made?[2]

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and is a compound question. Defendant never planned to make any changes to the trust for Carl. It was defendant's understanding that Nelva planned to make changes to the trust. There was a concern by Nelva, defendant, and defendant's siblings that Carl's future well-being may not be met by Drina, and that Drina may take steps to reach Carl's share of trust assets. Nelva never signed the changes into effect.

22. Where are the documents you referred to that you intended for Nelva to sign?[3]

RESPONSE: To defendant's knowledge they were never signed. Defendant does not know what happened to such documents.

23. What was the date of your prior inquiry and why was the inquiry made more than one year after you were noticed of the existence of those EE Bonds?

RESPONSE: Candace and Carl consistently and repeatedly accused Carol of stealing bonds that were alleged to be in the name of Nelva or Elmer. Defendant did not see a record of the bonds being in the name of the trusts. In late 2014, Carol informed defendant that she could request a record of the outstanding bonds, which was done in mid to late 2014.

24. What claim(s), if any, were you asking to be processed?

RESPONSE: None.

25. Did you subsequently submit the properly completed forms? If no, why not? If yes, what were the results and where are the transaction records?

---

[2] This is a question about a March 8, 2011 email from Anita.

[3] This is a question about a March 8, 2011 email from Anita.

RESPONSE: No, because Candace would not agree to the disposition of the bonds and the legal fees to seek court approval to cash the bonds in light of Candace's failure to agree made the transaction cost prohibitive.

Defendant objects to the balance of the interrogatories as exceeding the limits of permissible discovery under the Texas Rules of Civil Procedure. Defendant further objects to the balance of the interrogatories because Candace has not paid Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary,

(a) The decedent's trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year. Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you been given regarding income taxes paid by the trusts, if any?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) When considering funding for Mother's day-to-day needs prior to the establishment of the Rights of Survivorship account in the name of Carole Brunsting and Nelva Brunsting, what criteria did you use when you liquidated assets in the Edward Jones account? Was avoidance of capital gains tax a factor? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

5. Trustee Manual: The Bates stamped documents included in Plaintiff's document production P6-P155, "MyTrustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

(a) Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

i. Which of the eight "Do's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Which of the eight "Do's" have you not done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iii. Which of the nine "Do Not's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iv. Which of the nine "Do Not's" have you not done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

6. Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

7. Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

8. Please refer to the RESPONSE OF DEFENDANTS TO REPORT OF MASTER, filed

August 27, 2013, and answer the following:

Regarding trustee compensation,

(a) At the point in time when you paid your personal credit card debts from trust assets, were you aware that paying personal debt obligations directly out of trust accounts can be considered self-dealing or co-mingling, whether you were entitled to trustee compensation or not? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Appendix A, Section 1. states that Vacek & Freed determined the percentage amount of your fee to be 2% of the trust value of $2,291,300, or $45,826.00. What date was the fee calculation determined? What trust was the value based upon? What trust assets and their corresponding values were used in the calculation? Why was this calculated on an annual basis, rather than monthly or quarterly, since the value of the trust diminished every single month? What provision(s) in the trust set forth the standard for calculating this rate of compensation?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

9. Please refer to George Vie's July 15, 2013 letter to the Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, and the distribution you received in 2005 to pay off your house.

Your letter states that:

"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses." Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Amy and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of influence addressed to the Special Master.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in

the Texas Rules of Civil Procedure.

(b) Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) In general the July 15, 2013 letter to the Master attempts to provide excuses for the sudden acceleration of dissipation of mass quantities of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity. What was the distribution standard applied to those transactions? What effect did these transactions have on the value of the trust assets, trust tax liabilities, and the personal tax liabilities of the recipients? What were the facts upon which discretion was exercised in each of these transactions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) In your July 15, 2013 letter to the Master you claim “Defendants are individuals, not financial professionals.” It is presumed you knew of this fiscal incompetence before accepting the appointment to a fiduciary office. Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(f) In a letter dated May 22, 2012, Edward Jones states “We’re contacting you because either your financial advisor recently updated your account information or it has been three years since we last verified your information.” It goes on to ask you to “Please review the enclosed pages, which list your account information. If the information is correct, you do not need to return this letter.” This information contains the following:

Net Worth (must exclude value of primary residence): $1,700,000

Annual Income: $64,000

Prior Investment Experience: (4) Extensive Experience

Risk Profile: (3) Moderate

Current Occupation: Homemaker

Did you return the letter? If not, why not? When did you provide this information to Edward Jones originally?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

10. The following questions refer to information contained in the 2011 Form 1040 for Nelva E Brunsting, prepared by Kroese & Kroese P.C., signed by you as fiduciary "Under penalties of perjury".

(a) Line 15a IRA distributions = $58,792 / 15b Taxable amount = $58,792. On February 24, 2010, Mother executed a Change of Beneficiary Designations for IRA Account at Edward Jones, designating the five of us as " beneficiaries in equal shares". A previous List of Beneficiaries under Edward Jones letterhead, dated July 23, 2009, stated the same designation. On May 23, 2011, an electronic transfer was made from the IRA account number 609-91956-1-9, to the B of A account ending in 1143, in the amount of $54,000.

i. Were you aware of Mother's beneficiary designation for her IRA? If yes, why did you fail to follow it? If no, how could you not be?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Did you know this transaction would cause a tax liability for Mother?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Schedule A Medical and Dental expenses are listed as $118,893.

i. Many of the caregiver payments contained reimbursements for meals and incidental expenses purchased on behalf of our Mother. Were these reimbursementsincluded in the caregiver costs? If so, what is the total for these reimbursements? Did the preparer know these reimbursements were included? If so, please provide support of the preparer's knowledge.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. IRS Publication 926 Household Employer's Tax Guide sets forth the rules for employment taxes. You were required to withhold and pay social security and Medicare taxes on the wages. As the employer you can choose to pay this yourself and not withhold it. Did you

withhold social security and Medicare from the caregivers paychecks? If no, why not? Did you pay 13.3% of gross wages on behalf of the caregivers to the IRS? If no, why not? Did you issue a W-2 to each caregiver? If no, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(c) Did you seek the advice of a professional in connection with employing caregivers and related employment taxes? Did you seek the advice of a professional regarding what medical and dental expenses are deductible? If so, who did you consult with and what did they tell you?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

11. Numerous distributions have been made and some requests for distribution have been declined or opposed by you based upon your exercise of discretion.

(a) To what extent, if any, did Amy participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) To what extent, if any, did Carole participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(c) To what extent, if any, did Candace participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) To what extent, if any, did Carl participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) To what extent, if any, did Candace Freed participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

* * * * *

Exhibit 24

Candace email statutory demand for accounting

MIME-Version: 1.0
Content-Type: multipart/mixed; boundary="----=_Part_483675_1625879494.1443134736376"

On Monday, June 15, 2015 3:40 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Anita and Amy have a fiduciary **obligation** to provide **ALL** of the beneficiaries with the same information regarding trust income and expenses, on a regular basis. **IT IS THEIR DUTY TO ACCOUNT,** and to keep us advised of our beneficial interests, yet they have failed to properly do so for more than 4 and a half years.

Judge Butts' September 4, 2014 order states that the trustees:

"- provide all parties with notice of their intent to pay all federal income taxes... within five business days of the receipt of the amount of taxes due along with all documentation received from the accountant of the amount of such taxes and provide all parties with copies of all tax returns to be filed... and all invoices form the accountant related to the preparation of federal and state income tax returns...; and provide all parties with copies of the checks paid within five business days of the date of payment and a copy of all executed documents filed with the checks;"

Your flagrant disrespect of the federal injunction, calling it questionable, and Anita's willful violation of the injunction is contemptible, to say the least.

None of the criteria of Judge Butts' order has been met.

Please provide the backup for the 2014 Decedent's Trust Form 1041. Line 14 - Attorney, accountant, and return preparer fees, in the amount of $16,831, needs to be supported in more detail, as does the capital gain on line 4.

Please send copies of all bank and brokerage statements for 2014. It is possible these were forwarded earlier to prior counsel, but I don't have them.

The payment to Kroese & Kroese P.C. for the "farm lease" (BRUNSTING005519) was unauthorized and a violation of the injunction.

Amy and Anita's failure to negotiate the EE Bonds before they reached the point where they "may not be reissued or replaced" cannot be excused. The assertion that they did not know about them, when they themselves disclosed their existence in their April 9, 2013 CD, simply won't cut it. On August 13, 2013, in response to their objection to the Report of Master, at item 4, I identify the missing EE Bonds as known assets of the trust that the trustees did not account for. On September 3, 2013, at a hearing on the Report of Master, during Mr. West's testimony, he mentioned his curiosity as to the whereabouts of said bonds. A check with the Treasury Department website revealed how easy it is to have the bonds replaced or reissued when they have been lost, or stolen (as the case may be). One need only submit the documentation as listed on the attached letter I received from the Treasury Department, dated October 8, 2014. I do not possess this documentation, the trustees are supposed to have these instruments.

This failure equates to approximately $6,500.00 in lost value of the trust assets. Whether it is irresponsible, reckless, careless, negligent, or intentional, is inconsequential in the face of the blatant refusal of the trustees to properly protect and account for these assets. It is not even a little amusing that three years after Anita allegedly became trustee, that she should claim

ignorance as to the trusts' ownership interest in those bonds or that after more than 2 years of attempting to get them to account for the bonds it is apparently the plaintiff's fault for not consenting to the trustees' cashing of bonds not even in their possession.

This electronic communication shall stand as a demand for a full, true, and complete accounting, certified as such, in conformance with the Texas Property Code and the common law.

It is also my final informal demand for the fiduciary disclosure, which the trustees full well know is the property of all five beneficiaries, and I do not have to pay them anything to meet their fiduciary obligations. Let's start with the July 1, 2008 appointment that you assert has already been disclosed.

Candace L. Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

Attachments:

10082014 EE Bond Treasury Response Letter to candy.pdf 4.4 MB

Exhibit 25

Defendants 1st Amended Disc Responses

THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

To: Bobbie G. Bayless **Fax:** (713) 522-2218

Phone:

From: Cory S. Reed **Phone:** (713) 403-8213

Date: March 4, 2014 **Time:**

File No: 00520.415 **User ID:** REEDC

Re: Cause No. 2013-05455; *Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al*; In the 164th Judicial District Court of Harris County, Texas

There are 28 **pages being sent, including this page.**

If you are having difficulty receiving this document, please call:

Rosie Gonzalez **at** (713) 403-8396

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

Message: **Please see attached.**

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THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

Cory S. Reed
Direct Dial: (713) 403-8213
creed@thompsoncoe.com

Austin
Dallas
Houston
Los Angeles
Northern California
Saint Paul

March 4, 2014

VIA FACSIMILE
Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

Re: No. 2013-05455; *Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al*; In the 164th Judicial District Court of Harris County, Texas.

Dear Ms. Bayless:

Enclosed, please find the following:

1. Defendants' First Amended Objections and Responses to Plaintiff's First Request for Production; and

2. Defendant Candace L. Kunz' First Amended Objections and Answers to Plaintiff's First Set of Interrogatories.

Sincerely,

Cory S. Reed

/rg
Enclosures

1979525v1
00520-415

17-20360.1378

CAUSE NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
V.	§	HARRIS COUNTY, TEXAS
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC,	§	
Defendants.	§	164TH JUDICIAL DISTRICT

DEFENDANTS' FIRST AMENDED OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION

TO: **CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATE OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING**, Plaintiff, by and through his attorney of record, Bobbie G. Bayless, Bayless & Stokes, 2931 Ferndale, Houston, Texas 77098.

Pursuant to Rule 196, TEXAS RULES OF CIVIL PROCEDURE, Defendants **CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC** hereby submits their First Amended Objections and Responses to Plaintiff's First Request for Production.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: _____

Zandra E. Foley
State Bar No. 24032085
Cory S. Reed
State Bar No. 24076640
One Riverway, Suite 1600
Houston, Texas 77056
Telephone: (713) 403-8200
Telecopy: (713) 403-8299
E-Mail: zfoley@thompsoncoe.com
E-Mail: creed@thomspsoncoe.com

ATTORNEYS FOR DEFENDANTS, CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC

CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Texas Rules of Civil Procedure, on this the 4th day of March, 2014, a true and correct copy of this document has been forwarded by certified mail, facsimile and/or e-filing to counsel:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

_____
Cory S. Reed

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All agreements with Elmer Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 2: All agreements with Nelva Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 3: All agreements with Anita Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 4: All agreements with Amy Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 5: All agreements with Carole Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants object to

this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 6: All joint defense agreements with any party concerning the Brunsting Trust dispute.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 7: All invoices for services provided or expenses incurred on behalf of Elmer and/or Nelva Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 8: All documents reflecting payments made on the invoices described in number 7 above.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 9: All invoices for services provided or expenses incurred on behalf of Anita and/or Amy Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time.

Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 10: All documents reflecting payments made on the invoices described in number 9 above.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 11: All invoices for services provided or expenses incurred on behalf of any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 12: All documents reflecting payments made on the invoices described in number 11 above.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 13: All correspondence, including emails, with Elmer and/or Nelva Brunsting.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 14: All correspondence, including emails, with Anita Brunsting prior to the establishment, if any, of an attorney client relationship with her.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 15: All correspondence, including emails, with Amy Brunsting prior to the establishment, if any, of an attorney client relationship with her.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 16: All correspondence, including emails, with Carole Brunsting.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 17: All correspondence, including emails, with Carl and/or Drina Brunsting.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 18: All correspondence, including emails, with Carl Brunsting's daughter, Marta.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 19: All correspondence, including emails, with any third parties, other than your attorney, about Nelva Brunsting, any other member of the Brunsting family, and/or any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 20: All drafts of documents prepared by Vacek & Freed for Nelva Brunsting's signature.

RESPONSE: Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 21: Originals of all documents signed by Nelva, Elmer, Anita, Amy, Candy, Carole, or Carl Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced. The originals will be made available at the offices of Defendants' counsel at a reasonable and mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 22: Originals of all documents notarized by Candace Freed involving Elmer, Nelva, Anita, Amy, Candy, Carole, or Carl Brunsting and/or any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced. The originals will be made available at the offices of Defendants' counsel at a reasonable and mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 23: Originals of all documents notarized or witnessed by anyone at Vacek & Freed, PLLC other than Candace Freed which involve Elmer, Nelva, Anita, Amy, Candy, Carole, or Carl Brunsting and/or any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced. The originals will be made available at the offices of Defendants' counsel at a reasonable and mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 24: All opinion letters or reports provided concerning Elmer, Nelva, Amy, Anita, Candy, Carole, or Carl Brunsting or any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 25: All opinion letters or reports sought or received from any third parties concerning Elmer, Nelva, Amy, Anita, Candy, Carole, or Carl Brunsting or any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 26: All joint representation or conflict of interest disclosures provided to Elmer, Nelva, Anita and/or Amy Brunsting.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause,

is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 27: All documents establishing your attorney/client relationship with Elmer and/or Nelva.

RESPONSE: Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 28: All documents terminating your attorney/client relationship with Nelva.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 29: All documents establishing your attorney/client relationship with Anita, either individually or as trustee of any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 30: All documents terminating your attorney/client relationship with Anita, either individually or as trustee of any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause,

is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 31: All documents terminating your attorney/client relationship with Amy, either individually or as trustee of any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 32: All documents establishing your attorney/client relationship with Amy, either individually or as trustee of any of the Brunsting Trusts.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 33: All documents relating to any referrals of Anita and/or Amy, either individually or as trustees of any of the Brunsting Trusts, to other attorneys.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

REQUEST FOR PRODUCTION NO. 34: All cell phone and/or long distance records and logs reflecting telephone calls with Anita, Amy, and/or Candy from July 1, 2010 to the present.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 35: All long distance records and logs reflecting faxes to Anita, Amy, and/or Candy from July 1, 2010 to the present.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 36: All logs reflecting faxes from Anita, Amy and/or Candy from July 1, 2010 to the present.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 37: All cell phone records reflecting calls with Nelva from July 1, 2010 to the present.

RESPONSE: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 38: All records reflecting 'faxes to or from Nelva from July 1, 2010 to the present.

RESPONSE: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 39: All cell phone records reflecting calls with Carl and/or Drina Brunsting from July 1, 2010 to the present.

RESPONSE: Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 40: All records reflecting faxes to or from Carl and/or Drina Brunsting from July 1, 2010 to the present.

RESPONSE: Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 41: All cell phone records reflecting calls with Carole Brunsting from July 1, 2010 to the present.

RESPONSE: Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 42: All records reflecting faxes to or from Carole Brunsting from July 1, 2010 to the present.

RESPONSE: Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 43: All investigators' reports relating to the Brunsting family and/or any of the Brunsting Trusts.

RESPONSE: Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants object to this request because it seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants object to this request because it assumes facts not in evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 44: All tape recordings and/or video recordings involving any Brunsting family member and/or any of the Brunsting Trusts.

RESPONSE: Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants object to this request because it seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants object to this request because it assumes facts not in evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 45: All photographs involving any Brunsting family member and/or any of the Brunsting Trusts.

RESPONSE: Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants object to this request because it seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants object to this request because it assumes facts not in evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 46: All materials provided to Elmer and/or Nelva Brunsting.

RESPONSE: Defendants object to this request because it is overly broad, unduly burdensome, harassing, and fails to specify those documents sought with reasonable particularity. Defendants object to the request as it is overly broad, calls for material wholly irrelevant to this cause, and is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it is not limited in time. Defendants further object to this request to the extent it documents that are equally available to Plaintiff.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants could not possibly recall every material ever provided to Elmer and/or Nelva

Brunsting. Please see the responsive documents previously produced which Defendants specifically recall providing to them.

REQUEST FOR PRODUCTION NO. 47: All communications to beneficiaries of the Brunsting Trusts.

RESPONSE: Defendants object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 48: All calendars reflecting legal work and/or meetings or telephone conferences with any member of the Brunsting family or with any third parties concerning Brunsting family issues and/or any of the Brunsting Trusts.

RESPONSE: Defendants object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 49: All source documents used to prepare any accountings relating to assets owned by Elmer Brunsting, Nelva Brunsting and/or any of the Brunsting Trusts.

RESPONSE: Please see the responsive documents previously produced.

REQUEST FOR PRODUCTION NO. 50: All speeches, outlines and/or materials distributed at presentations made by Vacek & Freed attorneys or employees which were attended by Elmer or Nelva Brunsting.

RESPONSE: Defendants object to this request because it is overly broad, unduly burdensome, harassing, and fails to specify those documents sought with reasonable particularity. Defendants object to the request as it is overly broad, calls for material wholly irrelevant to this cause, and is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants do not recall which presentations were attended by Elmer and/or Nelva Brunsting.

REQUEST FOR PRODUCTION NO. 51: All speeches, outlines and/or materials distributed at presentations made by Vacek & Freed attorneys or employees since January 1, 2008.

RESPONSE: Defendants object to the request as it is overly broad, calls for material wholly irrelevant to this cause, does not state with reasonable particularity what is being called for, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants will supplement related speeches, outlines and/or materials distributed at presentations in accordance with the Texas Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 52: All pleadings from any cases in which you have been named as a party since January 1, 2008, other than those relating to the Brunsting Trusts.

RESPONSE: Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants also object to this request because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent it seeks public information that is equally available to Plaintiff.

REQUEST FOR PRODUCTION NO. 53: All expert designations identifying attorneys at Vacek & Freed as experts in any cases since January 1, 2008.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 54: All opinions or expert reports concerning fiduciary or trust issues prepared by any attorney with Vacek & Freed since January 1, 2008.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 55: All designations of experts, reports prepared by experts, and depositions of experts in cases in which you have been named as a party since January 1, 2008.

RESPONSE: Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

REQUEST FOR PRODUCTION NO. 56: All exhibits you plan to offer in the trial of this case.

RESPONSE: Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories of Defendants' counsel, and thereby invades the work product privilege.

Subject to the foregoing objection and without waiving the same, Defendants respond as follows: Defendants will timely supplement such documents in accordance with the Texas Rules of Civil Procedure, if necessary.

CAUSE NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
V.	§	HARRIS COUNTY, TEXAS
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC,	§	
Defendants.	§	164TH JUDICIAL DISTRICT

DEFENDANT CANDACE L. KUNZ' FIRST AMENDED OBJECTIONS AND ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: **CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATE OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING**, Plaintiff, by and through his attorney of record, Bobbie G. Bayless, Bayless & Stokes, 2931 Ferndale, Houston, Texas 77098.

Pursuant to Rule 197, TEXAS RULES OF CIVIL PROCEDURE, Defendants **CANDACE L. KUNZ** hereby submits her First Amended Objections and Answers to Plaintiffs' First Set of Interrogatories.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Texas Rules of Civil Procedure, on this the 4th day of March, 2014, a true and correct copy of this document has been forwarded by certified mail, facsimile and/or e-filing to counsel:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

_____
Cory S. Reed

INTERROGATORIES

INTERROGATORY NO. 1: Provide any cell phone numbers you have had since July 1, 2010 and identify the company providing cell phone service for each such number.

ANSWER: Defendant further objects to the request on the grounds of undue burden, harassment, irrelevancy, and violation of confidentiality and rights of privacy of Defendant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it constitutes an unfair prejudicial invasion of Defendant's proprietary interest, personal, constitutional, and property rights absent probative value to the issues of this case. The unfairness far outweighs any probative value.

Subject to the foregoing objection and without waiving the same, Defendant answers as follows: Since July 1, 2010 my cell phone number has been (281) 217-0013.

INTERROGATORY NO. 2: Identify the company providing your long distance service both at work and at home since July 1, 2010.

ANSWER: Defendant further objects to the request on the grounds of undue burden, harassment, irrelevancy, and violation of confidentiality and rights of privacy of Defendant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it constitutes an unfair prejudicial invasion of Defendant's proprietary interest, personal, constitutional, and property rights absent probative value to the issues of this case. The unfairness far outweighs any probative value.

Subject to the foregoing objection and without waiving the same, Defendant answers as follows: Since July 1, 2010 the provider of my long distance service at home has been AT&T and at the office has been Cbeyond, Inc.

INTERROGATORY NO. 3: Provide all email addresses you have had since July 1, 2010 and identify the internet service provider for all such addresses.

ANSWER: Defendant further objects to the request on the grounds of undue burden, harassment, irrelevancy, and violation of confidentiality and rights of privacy of Defendant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it constitutes an unfair prejudicial invasion of Defendant's proprietary interest, personal, constitutional, and property rights absent probative value to the issues of this case. The unfairness far outweighs any probative value.

Subject to the foregoing objection and without waiving the same, Defendant answers as follows: Since July 1, 2010 I have used Candace@vacek.com and freedcandace@sbcglobal.net.

INTERROGATORY NO. 4: If you contend Nelva Brunsting had capacity at each time after July 1, 2010 when she signed documents prepared by Vacek & Freed, state all actions you took to insure her capacity.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal its evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: As I do for all of my clients, I met with Ms. Nelva Brunsting in-person and discussed all of the documents prior to her signing them. Before she actually signed any of the documents I ensured they were properly drafted as she requested.

INTERROGATORY NO. 5: If you contend Nelva Brunsting lost capacity at some point after July 1, 2010, state when that occurred, how it was determined she lacked capacity, what documents it prevented her from signing, and all facts indicating her lack of capacity at that point.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: At no time before or after July 1, 2010 have I ever stated that Ms. Brunsting lost capacity.

INTERROGATORY NO. 6: Please indicate all steps taken to ensure that Nelva Brunsting was not unduly influenced by other parties in connection with documents prepared by Vacek & Freed after Elmer Brunsting's death.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: As I do for all of my clients, I met with Ms. Brunsting in-person and discussed all of the documents prior to her signing them. Before she actually signed any of the documents I ensured they were properly drafted as she requested. I do not think/believe Ms. Brunsting was influenced by other parties, because at no time were any material changes made in the disposition of her estate plan with respect to the beneficiaries.

INTERROGATORY NO. 7: Describe all steps taken after July 1, 2010 to ensure that the beneficiaries of the Brunsting Trusts were treated impartially.

ANSWER: Defendant objects that this interrogatory is vague, ambiguous, overbroad, unduly burdensome, and fails to specify the information sought with reasonable particularity. Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: Ms. Brunsting had a general power of appointment over the Survivor's Trust assets and a Limited Power of Appointment over the Decedent's Trust assets among the joint descedents of Elmer and Nelva. These power of appointments allowed her to include or exclude descendants of both Nelva and Elmer Brunsting from the assets. No notice is required to be given if she had exercised these limited and general powers of appointment. Notwithstanding, at one point in time, Ms. Brunsting requested that I draft documents removing one of her grandchildren as a remainder beneficiary. After further discussion, Ms. Brunsting decided not to sign the power of appointment.

INTERROGATORY NO. 8: Describe all steps taken to ensure that the beneficiaries of the Brunsting Trusts were properly informed concerning the terms and activities of the Brunsting Trusts after Elmer Brunsting died.

ANSWER: Defendant objects that this interrogatory is vague, ambiguous, overbroad, unduly burdensome, and fails to specify the information sought with reasonable particularity. Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: Ms. Brunsting had a general power of appointment over the Survivor's Trust assets and a Limited Power of Appointment over the Decedent's Trust assets. These powers of appointments allowed her to include or exclude descendants of both Nelva and Elmer Brunsting from the assets. No notice was required to be given if she had exercised these powers of appointment. Ms. Brunsting was the primary beneficiary of both the Decedent's Trust and the Survivor's Trust until her passing. Upon her death, I provided the Successor Trustees with a document titled "I'm a Trustee Now What." This document provided the Successor Trustees with information related to their fiduciary duties as an acting trustee and accounting requirements. It would be the Successor Trustee(s) responsibility to keep the beneficiaries informed of the terms and activities of the Trust according to the terms of the Trust.

INTERROGATORY NO. 9: Describe all steps taken to ensure that Nelva Brunsting's interests were protected both before and after she resigned as trustee.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: As I do for all of my clients, I met with Ms. Brunsting in-person and discussed all of the documents prior to her signing them. Before she actually signed any of the documents I ensured they were properly drafted as she requested. Specifically, I explained to Ms. Brunsting the effect of the resignation and that the resignation was revocable and could be reversed if she later desired. Also, as a matter of course, trustees are advised of their fiduciary duty to the beneficar(ies) and their duty to account for trust assets. Trustees are advised to be familiar with and defer to the trust documents.

INTERROGATORY NO. 10: Describe all steps taken to ensure that the assets of the Brunsting Trusts were preserved after July I, 2010.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: I did not take any steps to preserve the Trust assets. It is one of the duties of the Trusee(s) to preserve the assets of the trust.

INTERROGATORY NO. 11: Describe all steps taken to determine the nature and values of the assets owned by Elmer Brunsting, Nelva Brunsting, or by any of the Brunsting Trusts at the time of Elmer Brunsting's death and identify every person providing information concerning the value and existence of assets.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: After the death of a Grantor, the remaining trustee or successor trustee may engage my firm to assist in the identification of assets, titling, and if recommended or desired, implement tax planning and file federal estate tax return, if necessary. In this case, Ms. Brunsting did retain our firm to advise on the administration of the Trust and to implement the tax planning, including the funding of a credit shelter trust. In fact, I met with Ms. Brunsting a minimum of three times to discuss the value and existence of assets. Date of death values are/were obtained from brokers, appraisers, tax preparers, and banks, as well as the internet, evaluation programs and monthly account statements provided by Ms. Brunsting herself. These values are/were used to determine proper allocation among trusts and then are divided according to the terms of the trust agreement, State law and Trustee discretion. In this case, asset information was obtained from the following persons or companies:

Rich Rikkers
Bennie K. Jans, Broker at Jans Real Estate
Darlene at Edward Jones
Nelva Brunsting
Harris County Appraisal District
Anita Brunsting
Kelley Blue Book
John Hancock: Donna Vickers
Securian: Erin Nuccum
BNY Mellon
Computershare
Metlife: Clare Cook, Douglas Uhling
Ohio State Life Insurance Co
ChaseMellon Shareholder Services
Bank of America
BlueBonnett Credit Union

INTERROGATORY NO. 12: Describe all steps taken to determine the nature and values of the assets owned by the Brunsting Trusts at the time of Nelva Brunsting's resignation as trustee and identify every person providing information concerning the value and existence of assets.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: I did not take any steps to determine the nature and value of the assets owned by the Trusts at the time of Ms. Brunsting's resignation as trustee, and I was requested or engaged to do so. One of the duties of the Successor Trustee would have been to determine the Trusts assets.

INTERROGATORY NO. 13: Describe all steps taken to determine the nature and values of the assets owned by Elmer Brunsting's estate, Nelva Brunsting, or by any of the Brunsting Trusts at the time of Nelva Brunsting's death, and identify every person providing information concerning the value and existence of assets.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: After the death of a Grantor, the remaining trustee or successor trustee may engage my firm to assist in the identification of assets, titling, and if recommended or desired, implement tax planning and file federal estate tax return, if necessary. Date of death values are obtained from brokers, appraisers, tax preparers, and banks, as well as the internet, evaluation programs and monthly account statements. These values are used to determine proper allocation among trusts and then are to be divided according to the terms of the trust agreement. In this case, asset information was obtained from the following persons or companies:

Anita Brunsting
Amy Brunsting
Carol Brunsting
Candace Curtis
Bank of America Statements
Houston Association of Realtors
Harris County Appraisal District
BNY Mellon
Bluebonnett Credit union
Internal Revenue Services
Lincoln Financial Group
Edward Jones
Doug Williams
Kally Mouw, Certified Appraiser

INTERROGATORY NO. 14: Specify the dates and locations of all meetings any representative of Vacek & Freed had with Nelva Brunsting after July 1, 2010 and identify all parties attending such meetings.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: I met with Ms. Brunsting in her residence on December 21, 2010. At this time I cannot recall everyone present, but believe remember Anita Brunsting, Amy Brunsting, and Carole Brunsting, along with a caregiver to have been present.

INTERROGATORY NO. 15: Specify the date of every telephone conference any representative of Vacek & Freed had with Nelva Brunsting after July 1, 2010 and identify any other parties participating in each telephone conference.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Ms. Brunsting and a representative of Vacek & Freed after July 1, 2010:

October 7, 2010 (am) – Candace Kunz-Freed and Nelva Brunsting. Carol Brunsting was on the telephone for part of the conversation.
October 7, 2010 (pm) – Candace Kunz-Freed and Nelva Brunsting.
October 11, 2010 – Summer Peoples and Nelva Brunsting.
October 11, 2010 – Candace Kunz-Freed, Susan Vacek, and Nelva Brunsting.
October 14, 2010 – Summer Peoples and Nelva Brunsting.
October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned.

INTERROGATORY NO. 16: Specify the date of every telephone conference any representative of Vacek & Freed had with Anita Brunsting after July 1, 2010 and identify any other parties participating in each telephone conference.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Anita Brunsting and a representative of Vacek & Freed after July 1, 2010 and up to the time Nelva resigned:

July 20, 2010 – Candace Kunz-Freed and Anita Brunsting.
October 6, 2010 – Candace Kuntz-Freed and Anita Brunsting.
October 11, 2010 – Summer Peoples and Anita Brunsting.

October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned.

INTERROGATORY NO. 17: Specify the date of every telephone conference any representative of Vacek & Freed had with Amy Brunsting after July 1, 2010 and identify any other party participating in the call.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Amy Brunsting and a representative of Vacek & Freed after July 1, 2010 and up to the time Nelva resigned:

October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned..

INTERROGATORY NO. 18: Specify the date of every telephone conference any representative of Vacek & Freed had with Carole Brunsting after July 1, 2010 until the present and identify any other party participating in the call.

ANSWER: Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Amy Brunsting and a representative of Vacek & Freed after July 1, 2010:

October 7, 2010 (am) – Candace Kunz-Freed and Nelva Brunsting. Carol Brunsting was on the telephone for part of the conversation.
October 13, 2010 – Candace Kuntz-Freed and Carol Brunsting.
October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned.

Subject:	Hearing Date Request
From:	Candace Curtis (occurtis@sbcglobal.net)
To:	clarinda.comstock@prob.hctx.net;
Date:	Tuesday, February 9, 2016 6:26 PM

Dear Judge Comstock:

The motion I filed today asks that Judge Butts order the transfer of the related District Court case to Probate Court #4. Hearing on the transfer motion should not be necessary. However, at this time I would respectfully request a hearing date for the following dispositive motions and any other dispositive motions the Court deems appropriate to resolve at the hearing:

1. Plaintiff Curtis' Answer with Motion and Demand to Produce Evidence (PBT-2015-227757)
2. Plaintiff Curtis' Verified Motion for Partial Summary Judgment and Petitions for Declaratory Judgment (PBT-2016-26242)

Respectfully submitted,

Candace L. Curtis
Plaintiff pro se
Beneficiary of the Brunsting family of trusts
Heir to Nelva E. Brunsting
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American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

REPORTER'S RECORD

VOLUME 1 OF 1

COURT CAUSE NO. 412.249-401

APPELLATE NO. _____

THE ESTATE OF: NELVA E. BRUNSTING, DECEASED	)	IN THE PROBATE COURT NUMBER 4 (FOUR) OF HARRIS COUNTY, TEXAS

* * * * * * * * * * * * * * * *

MOTION TO TRANSFER

STATUS CONFERENCE

MOTION FOR CONTINUANCE

* * * * * * * * * * * * * * * *

On the 9th day of March, 2016, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Clarinda Comstock Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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FORMER TEMPORARY ADMINSTRATOR

VOLUME 1
(MOTION TO TRANSFER/STATUS CONFERENCE/
MOTION FOR CONTINUANCE)

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March 9, 2016

PROCEEDINGS

THE COURT: Okay. So, calling Cause Number 412.249 in the 409, Nelva E. Brunsting, Deceased.

We have several matters to address in this file today.

We were asked to consider a motion to transfer consolidate -- motion to transfer cause in district court to Probate Court 4 which is what was originally set in this case. I now have a motion for continuance in that matter or for continuance of that motion.

Zandra Foley, the attorney representing Candace Kunz-Freed and Vacek & Freed; is anyone here from that firm today?

MR. REED: I am, Your Honor. Cory Reed for Thompson, Coe.

THE COURT: Thank you. I'm sorry, tell me your name again.

MR. REED: Cory Reed.

THE COURT: How do you spell your last name?

MR. REED: Reed, R-E-E-D.

THE COURT: Say it again.

MR. REED: R-E-E-D.

THE COURT: Thank you. You speak very quickly.

Okay. Why don't we start with announcements. We've heard from Mr. Reed, could we start with you, Mr. Spielman.

MR. SPIELMAN: Yes, Judge. Neal Spielman representing Amy Brunsting.

MR. MENDEL: Steve Mendel representing Anita Brunsting.

MS. BRUNSTING: And I'm Carole Brunsting, and I'm now pro se. Darlene Payne Smith was my attorney but now I'm pro se.

THE COURT: Thank you.

MR. LESTER: I'm Greg Lester. I was temporary administrator and now I'm, I'm observer, I guess, participant.

THE COURT: Thank you.

MS. CURTIS: Candace Curtis, pro se.

MS. BAYLESS: Bobbie Bayless on behalf of Drina Brunsting as Attorney In Fact for Carl Brunsting.

THE COURT: Thank you.

Is anyone here inclined to stand up and begin this proceeding or should I?

MOTION TO TRANSFER

ARGUMENT BY MS. CURTIS:

MS. CURTIS: Okay. So, I guess the first thing that we're talking about is my motion to transfer the district court case into Probate Court Number 4.

And there's been a response with an objection saying that they are not the same questions in both courts; and so basically, all equitable claims related to the estates of our parents belong in this court. All equitable remedy belongs before this Court.

The causes of action in Curtis v. Brunsting are equitable. They are not legal causes of action. In other words, they do not sound in tort or contract actions in law. That distinction must be maintained --

THE COURT: Ms. -- I don't mean to -- I'm sorry. I feel a little pressured for time because I'm running so far behind today --

MS. CURTIS: This is real short.

THE COURT: Okay.

MS. CURTIS: So, Ms. Foley refers to the district court action as a legal malpractice action, but legal malpractice shows up in the district court case as many times as to actual theories pending in the district court case, appear in her objection. She refers to the

district court case as a legal malpractice action 42 times in her response. But the complaint in the district court never mentions "malpractice." So, the causes of action are the same in the district court as they are here with the exception of the Deceptive Trade Act. And there is a negligence, and those causes appear zero times in Ms. Foley's objection.

So, I just -- I don't think that there is representation in the district court for any of the matters in this court. And so, they need to come over here so that we can discuss all of the things that are the same in both cases and decide the facts. And they want to go back and deal with malpractice in the district court - that's fine.

THE COURT: Okay. Would you like to respond?

MR. REED: I'll let you finish and see if I still need to say anything.

THE COURT: I'm disinclined because the motion for continuance was filed. I'm, I guess, I'm disinclined to make a ruling on that motion today; but I have to say that it seems to me like all of these -- like you're correct - that these matters would best be handled in the probate court.

I'm hesitant because it seems to me that

if everyone were in one venue, that it would be easier to come to some sort of resolution in this case. And I think that this case is begging for some kind of resolution, perhaps, outside of a ruling by one of the courts that's involved.

Having said that, I didn't want to waste your time, Ms. Curtis; I know that you've come from California, and I wanted to give you all the opportunity you needed to voice your concerns on that issue, and I want to go forward with the status conference today and get as much accomplished as we can.

I'm happy to hear the motion for continuance. I'm happy to continue the motion to transfer until a later date so that we could hear from your firm. I don't know whether you or Ms. Foley is the more appropriate person to respond to that motion. I was hopeful that we might be able to get a response from you today about the substance; are you still wanting to continue that?

MOTION FOR CONTINUANCE

ARGUMENT BY MR. REED:

MR. REED: Yes, Your Honor, our client would prefer Ms. Foley to argue it so we would continue our -- or seek to continue today's hearing. I mean, if you have any specific questions -- I mean, one of your

concerns seems to be that it makes more sense to have everyone here for resolution like it's not even adding this -- the malpractice case is not going to help this case get resolved at all. It is going to take a ruling from the district court or this case to resolve this matter.

Having monitored this case for the past two years, it's going to take a ruling from the Court to resolve the case. So, I just, you know, would implore the Court not to bring over the malpractice case, let us get a ruling in that court, be done with that case, and you guys continue on with what's going on here.

THE COURT: Well I'm interested to hear from you or from Ms. Foley about you think those issues are better addressed in the district court than in the probate court where, you know, so much -- such similar issues are pending.

MR. REED: And I guess that's where we disagree on the "similar issues are pending."

In our mind, the only thing that's at issue is whether our -- the firm drafted the documents as requested by Ms. Brunsting. So, all these issues, whether she had capacity at the time, whether there was conspiracies or what not, that has no bearing, really, on the ultimate outcome of the malpractice case. The

only determination that would be made in our case is, is whether the lawyers acted like a reasonable lawyer should or would have done under similar circumstances.

THE COURT: Is that the meat of your summary judgment over in the district court is whether your client drafted the documents as requested?

MR. REED: The meat of our no-evidence motion is you have no evidence of any of the claims that have been brought against us. So and the point being there, at the time Carl Brunsting was the executor, he made, you know, a 30-page-plus of claims, took his deposition, had no facts to support any of it. I don't think anyone else in this room could step into that chair and have facts that could support the conduct they made in the malpractice case.

So, again, just bringing us over here is just going to delay us, and it's definitely not going to help resolve the malpractice claims.

THE COURT: Okay. Ms. Curtis?

MS. CURTIS: Can somebody explain to me how the claims in district court are malpractice claims? That's what I just can't see. They don't say, "malpractice." The only thing that could possibly be malpractice is maybe negligence, but never once is "malpractice" stated in the claims. Never.

THE COURT: There are lots of ways of drafting things, and I'm not familiar with the pleadings over in the district court to that extent; so, I'm not -- I'm really not the appropriate person to respond to that for you. There are a lot of lawyers, although they seem to be dropping, there are a lot of lawyers still involved in this case who might be able to better address that for you.

I would like to hear from everyone. Now that Mr. Lester has provided his report to the Court, I would like to hear from everyone about where you think we stand and how you feel this case ought to progress. Does somebody want to volunteer to go first?

STATUS CONFERENCE

ARGUMENT BY MR. MENDEL:

MR. MENDEL: We'd like you to order these parties to mediation, designate who the mediator is, give us a time frame to get it done. That was recommended in a report, and I think that would be an effective use of the parties' time.

THE COURT: Okay. Ms. Curtis, do you have a response to that?

MS. CURTIS: We've been to mediation already in this case. It was shortly after my case was remanded to the probate court --

THE COURT: Who was the mediator on that?

MS. BAYLESS: Bill Miller.

THE COURT: Sorry?

MS. BAYLESS: Bill Miller.

MS. CURTIS: And nothing was resolved. And I'm not going to go to mediation again because we've already been there once. The only issue that really was discussed were how the attorneys were going to get paid, and that doesn't matter to me.

I want my summary judgment motions heard, and if we can do that without bringing the district court case over here, then we should go ahead and do it. But that's my purpose for coming here today - is to get the summary judgment motions set for hearing. And I'm not going to go to mediation, again, because there is no point.

MR. SPIELMAN: Judge -- were you going to say something?

THE COURT: Please proceed.

STATUS CONFERENCE

ARGUMENT BY MR. SPIELMAN:

MR. SPIELMAN: We all, collectively, the parties and their counsel at the time, we all agreed to Mr. Lester taking the role that he was taking. And Ms. Curtis, herself, I believe, on the record, spoke of

having done her due diligence into every person that was suggested by any attorney that was in this room to serve in Mr. Lester's role, and it was Ms. Curtis' opinion that only Mr. Lester can serve in that role.

We all, as attorneys or as pro se parties, agreed that what the function that was designated to Mr. Lester was important, was necessary, and that we were going to live by and abide by the report that he wrote.

The problem that I see right now, and one of the reasons I suspect why Mr. Mendel suggested that we go to mediation is in deference to and with respect for what Mr. Lester said in his report and what he seems to be trying to suggest to the parties as to what the future of this lawsuit might hold.

I think that what we're seeing now is an effort to backtrack from the direction that Mr. Lester tried to set us on and some of the conclusions or recommendations that he made as to what some of these claims, particularly the ones that Ms. Curtis is attempting to bring forward in summary judgment, are going to actually look like.

I think the effort to backtrack from what Mr. Lester was instructed to do/ordered to do and what he did, in retrospect, you have to wonder what was the point of even having done that if the parties, or a

party, is now going to try to back away from the impact of what that was done?

One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to -- talked about the idea of using a former judge - I think we talked about that in the courtroom last time - that the right mediator might help to explain, to educate, to unentrench anybody - whether that be me, whether that be Mr. Mendel, whether that be Ms. Bayless, whether that be Ms. Brunsting, Ms. Curtis, whomever. I think Mr. Lester saw the wisdom in mediation. I think we see the wisdom in mediation. But the consternation or the concern at this point, again, is this issue that Ms. Curtis seems to be unwilling to appreciate, adapt, recognize, embrace what Mr. Lester concluded or recommended in his report; and if that's the case, then I wonder if, if spending the money that it takes to go to mediation makes sense.

Frankly, Judge, the most interesting thing that I heard Ms. Curtis say was on the issue of attorneys fees and that that doesn't matter to her; and that is exactly part of the point. I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to

the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved. I may have lost my train of thought there for a second.

But the point here, Judge, is there seems to be no accountability on Ms. Curtis' behalf for the amount of money that is being spent in this case. Parties have, in the past, suggested, oh, let's not worry about the attorneys fees because that will all even out at the end of the story when everybody decides to divide by five, the corpus of the trust, and the winning parties or the prevailing parties can -- everything can be adjusted through the division of that estate.

But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm. And if that happens, Judge, then the trust is now spending its own money from those people, whether it be three or four, that are still going to get a portion of the estate, a portion of the trust proceeds when this is all said and

done.

I'm rambling just a bit only because it's such a circular discussion - is how do we get this case finished, given, given the backtracking from everybody's willingness to vest Mr. Lester with the authority to proceed, and now the one person who doesn't like what he said, after she filed motions for summary judgment that are direct contradiction to the conclusions that he reached. The very constant of having to come down here and respond to those, to those motions for summary judgment, the amount of money that that will waste is insulting, is offensive to the parties.

I'd love to come up with a creative idea to create some accountability, perhaps, if it comes in the form of a sanction or perhaps it comes in the form of some kind of bond being posted so that if it turns out that one of the parties who is blowing things up as it were and creating this increased attorneys fees, no longer has an interest in the estate with which we can even that out by the end of the day. Perhaps if Ms. Curtis is ordered to post a bond against her claims or to protect against the ability -- our ability to recover fees from her if, as and when she loses her case, perhaps then we can move forward with additional hearings, additional motions and so forth.

Keep in mind, Judge, that it's not simply -- it's not as simple as getting a date for Ms. Curtis' summary judgment motions. There's been no discovery, in terms of depositions done in this case, not the least of which will be depositions from, perhaps, even from the lawyers in the other district court case who drafted the documents that can explain what all went into those documents, what Nelva Brunsting's state of mind was at the time. There's no way to respond to those summary judgment motions right now without the full weight of the discovery process moving forward and all of the money that that's going to cost.

So, you wanted my thoughts on what to do and on one hand, you know, I'm still of the belief that mediation with the right mediator should work, but beyond that, I'm also of the opinion that I'm not really sure what the next thing is.

THE COURT: Okay. Well, and I appreciate your argument, and I share in many of your concerns. I haven't heard from you, yet, Ms. Bayless.

MOTION TO TRANSFER

ARGUMENT BY MS. BAYLESS:

MS. BAYLESS: No, that's true. Trying to maintain a low profile, it's hard sometimes.

But I think that you've heard some things that the risk of going back to the motion to transfer that make it the obvious one - all the cases need to be together so that everything can be resolved at one time.

My client desperately wants to get this case settled, but I do not -- I share Mr. Spielman's concerns, and I have some others. I don't know how we're going to find a mediator who is thrilled about pro se parties. Many mediators won't take a case that has pro se parties. So, we have to deal with that issue. You -- maybe he knows one.

I will say this: That Mr. Miller, God love him, and I know him well, and he's mediated many cases for me, but he is not the mediator for this case.

THE COURT: And I was not considering sending you back to Mr. Miller.

MS. BAYLESS: Okay, good.

It really, really does cry out for some kind of a resolution. I don't think this suggestion of bond is particularly workable, and it's needed. I mean, there is valuable real estate in this estate that can be used to do whatever sanction-wise, division-wise, whatever he thinks he can prove. We don't have to go outside this case to resolve this case. I mean, we don't have to be making the case more complicated to get

the case resolved, in my view.

Now there may well be parties who don't want to resolve it, for whatever reason, you know and want to have a trial. I heard Mr. Reed say that and, you know, that it's going to require a Court decision. You know, but frankly, the whole no-contest issue that Mr. Lester raised in his report, and I assume if we don't work out some settlement procedure, we'll be filing responses to his report and dealing with that.

The whole no-contest clause violates the Trust Code and the Probate Code in its very language; and frankly, to prosecute a no-contest clause, you have to have a trial. You have to see whether it was filed and there was good cause in the filing and whether the case was prosecuted in good faith.

So, you're necessarily, to get to that issue, you're necessarily going to have to have a trial.

You could rule all day long that you believe it to be a valid clause not withstanding the fact that its very language violates the Trust Code and the Probate Code -- or the Estates Code, excuse me, but you're still going to have to have a trial about what that means. So, we need some mechanism that doesn't make us have to have a trial.

And now we've got two pro se parties, and

I just don't know a strong mediator that is going to deal with two pro se parties. Maybe there is one, but it is going to require someone strong if you go that route.

If Ms. Curtis is saying she's absolutely not going to go, I mean, I don't know what we do about that. And for all I know, Carole Brunsting may say she's not going to go. We haven't heard from her either.

You know, everybody else maybe could work out a resolution. My client wants very much to resolve the case, but I don't know how you resolve it piecemail when you're talking about a trust that has five beneficiaries. I mean, maybe somebody's smarter than I and could figure that out and you can come up with some kind of a, some kind of a design that says this happens, you know, if X, Y and Z falls into place and it says that. It's very -- it's a very problematic situation, and I don't think, you know, right now we don't even have a personal representative of the estate. So, I don't know how -- I think, frankly, that the district court case, there is some advantage being taken of an unfortunate situation relating to my client's, obviously capacity, unexpected incapacity in deposition. I get that. They're trying to zealously represent their

client. But the reality is if they go and dispose of that case without a personal representative when the Court has been notified of that, that is going to come back so fast from the court of appeals.

And, you know, they, today, before we came down here, they filed a motion for sanctions. You know, it's all about pressure in that case to maybe make that go away. And I think we sort of see the same problem in this case that, although people try to punch pressure buttons, nobody -- there's no structure, as frustrating as it is for me to say this, there's no structure where everybody is on board. And so, you know, we don't have a way to get these five beneficiaries separated from each other and separated from these courts and on down the road short of forcing someone to do something they don't want to do.

These are all strong-willed people. I don't know what happens if you force someone to do something that they don't want to do. You know, maybe they get there and they realize, well, there is some merit to this, but I agree, it's a waste of money if that isn't what happens.

And, I mean, I know there's some great mediators in town. We can go to Alice All [sic] to repair it. Maybe she would deal with pro se parties, I

don't know but I --

THE COURT: Well I want to explore that. You know, in my mind, every puzzle has a solution even if it feels a little bit like a Rubik's Cube, and I think that that's true of this case.

I feel like it does need to go back to mediation. I feel like any other direction at this point is, is going to -- it's just not going to advance the ball. This has been dragging on for so long and stalled out for so long, we really need to get it moving. And I feel in my heart that the best way to try to move this forward is to have it go to mediation. We do need a strong mediator. I have someone in mind who I haven't contacted yet, but I wanted to hear from everyone here, first, about their suggestions.

You have your hand up, but I want to hear from Carole first.

MR. MENDEL: Could I make one quick comment?

THE COURT: Uh-huh.

STATUS CONFERENCE

ARGUMENT BY MR. MENDEL:

MR. MENDEL: In fairness to Mr. Miller, the case was probably not right for mediation at early on in the case, but a lot has transpired since then that

I think makes it ripe for mediation.

I would agree oftentimes that a second mediation could be a waste of time, but not in this case. I think this case screams for a second mediation.

THE COURT: I agree.

MR. MENDEL: In terms of answering the Court's question - I think it should be a forceful personality; I think it should be a judge. I would like to see Judge Davidson be appointed to serve as the mediator in this case.

MR. SPIELMAN: That was actually going to be my suggestion, Judge. I know Judge Davidson would not have an issue with pro se elements in the case. I know, as a judge, he's certainly aware of the dynamics that that brings to the table.

I can say that Judge Davidson, having gone to a mediation with Judge Davidson in which I, because of his forcefulness, was forced to completely reevaluate the entire case that we came in there with. I know that he is the type of forceful personality that can unentrench people, that can and will do his own research and bring issues to the table that, perhaps, the parties walking in the mediation haven't even considered yet. I could not more strongly recommend Judge Davidson as being somebody that fits the bill for what this case is

needing; and, of course, everybody is welcome to do their due diligence to see the types of cases that he's presided over in the past, to see the docket that he carries now in the multi-district litigations. I would be as flabbergasted as flabbergasted could be if people walked away not thinking that he was the right person to make a try at this.

MS. BAYLESS: Just one question, I'm sorry. Just one question.

Do you know for sure? I have absolutely no problem with Judge Davidson. I think he's a great resolver of problems, but do you know that he would do a -- have you had a situation where there was a pro se party?

MR. SPIELMAN: I'm going to go with I'm 95 percent sure, but I'll be happy to make that phone call.

MS. BAYLESS: Anyway, that's my only --

THE COURT: I know Judge Davidson. And I, you know, similarly, I think that he could probably get the job done quite well. We could contact him and see how he feels about pro se parties.

MS. CURTIS: I also have a quick question about mediation.

Is there any reason why all of the siblings and their representatives can't be in the same

room to talk about it? Because I think that's where it fell down. The mediator came in one room and talked for a few minutes and then went to the next room and then the next room and then came back and told us what these other people said --

THE COURT: And that's how mediations often go. The mediator often makes a decision at the beginning of the day about whether he thinks it will be productive or not to bring everyone together. Often, you start out all in the same room. Sometimes, if things are going well, you get back together in the same room towards the end. And I would rely on the mediator to make that call because sometimes the parties are so far apart and antagonistic to one another, that putting them in the room, just escalates things. And so that's what -- that's why, you know, we leave that to the mediator, to kind of make that call. And hopefully, you know, if everybody is civil and can sit around the table and reasonably and constructively discuss the issues, then maybe that's the direction the mediation will go. There's nothing saying that you can't get together.

MS. CURTIS: And that's, if we could, then, yes, I would consider mediation; but I can't go through the mediation like we had before.

THE COURT: Okay. And, you know, and

there's some indication that there are a lot of reasons why that mediation was not successful. And maybe, you know, maybe if you got together for mediation now, your entire family would have a kumbaya experience and find one another. And I know that there is some head-shaking and things, but I need you, and frankly, everyone here, everyone involved in this, needs you to try to keep an open and forgiving mind going into mediation. And I'm not saying that you're going to, you know, walk away and forgive everything that's happened but at least see that there is some benefit to that, to some level of forgiveness going forward, so that you can get this resolved because being here in this building is not helping you. Ultimately, it's not helping anyone involved in this case. And so, that's why I feel that it's, you know -- I need you to go to mediation.

It sounds like you're coming around which I'm glad to hear, on some level, because even if you don't come around, I think I'm going to have to get to the point where I order you to go. And, you know, I mean, we don't like ordering people to do things that they don't want to do, but I think that it's in the best interest of everyone to go ahead and get to mediation.

If Judge Davidson doesn't pan out, the other name that came to my mind was John Coselli. I

hear that he's been doing some very good mediations recently, and I know that he's not -- well, I don't know. I don't think that his focus is probate, but I understand that he's very quick to come up to speed on the issues and has been quite effective in getting things done. So, that's another name that if Mr. Davidson doesn't pan out, we might look at.

Let's see...

Ms. Brunsting, did you have something you wanted to add?

MS. BRUNSTING: Well, I mean, I hear the word "pro se," and it's almost like it's a bad word in this court --

THE COURT: It is not a bad word in this court.

STATUS CONFERENCE

ARGUMENT BY MS. BRUNSTING:

MS. BRUNSTING: I've never been through anything like this before. I thought that it was in my best interest to get an attorney. And Darlene Payne Smith, while she's a very, very good attorney, she's a very expensive attorney. I finally just had to make the decision because I don't know if this is going to drag out another month or another 10 years. But I don't want it -- it's upside down, and so I had to just make the

decision, as I kind of talked about last year, to try to stop the bleeding. I had to just stop my own bleeding because otherwise what's going to happen is there may not be anything left to divide, but I'm going to end up having to go into my retirement savings to pay this bill now. So, I'm just having to make some life-decisions here. And, unfortunately, one of the things I had to do which is terminate my relationship with Darlene Payne Smith. It's nothing against her, but I just had to make a financial decision on my own because right now I'm faced with this huge bill that I'm going to pay because I try to live my life debt-free. It's going to take me a long time to pay it because I hadn't planned on having this bill.

But I guess my other concern is, and I heard some of the other attorneys make it is I feel like what Candy asked for, everybody tries to give to her. And we paid $42,000 for this accounting when we were in Judge Hoyt's [sic] court and that wasn't good enough. And now we've all agreed to Greg Lester, and that's not good enough. And so it just seems like it's going to go on forever, that whatever everybody tries to do to try to make Candy happy, we're always going to just end up straying away from that.

And so it's just like I'm hearing with

mediation, and I think the rest of us are willing to go to mediation, it's going to be, yes, I'll go to mediation but only if. What if everybody else doesn't agree to that? It is we all agree to go to mediation if we all agree to go sit in the same room, I'm thinking well -- that's why I'm shaking my head. I'm thinking, I doubt that will happen.

THE COURT: Well, as I said, you know, we need to leave that up to the mediator because the mediator controls how the mediation proceeds. And, you know, I encourage you to consider that if it looks like it's going to be constructive. She's not putting limitations on the mediation by any stretch of the imagination. We're going to go forward. We're going to go to mediation. We need to find an appropriate mediator, and that's going to happen. So, I want you to feel --

MS. BRUNSTING: But in the last mediation, I just felt like everybody was kind of blindsided because I sat in a room for probably three and four hours before -- just waiting and really had no idea what was going to happen. And then somebody comes in -- I mean, a mediator came in and just put a piece of paper in front of me and I go, "What is this?" "Well this is what they want." And, I mean, it was just ridiculous.

And then after that, we waited another few hours. And then what we were asked to give up was even bigger than that. And so, it was so ridiculous and I saw no attempt at anybody trying to mediate the system. Nobody knew what was going on.

So, I had actually talked to Mr. Lester about before -- I think before anybody's going to agree to mediation, everybody is going to have to be convinced that it's much better organized. The mediator's already talked to everybody to see what the real expectations are because if they're not realistic going in, we're going to be right back where we were before.

THE COURT: Okay. Thank you.

I want to comment about Mr. Lester. He's here today. He's not, my understanding is, he's not billing for his time today, so we're very grateful that you're here. I asked him to be here in case there are any questions about his report.

I think that the accounting that was done previously in the federal court, as well as the report that Mr. Lester provided, is helpful in this case because I think it gives the Court and it gives all the parties some insight into how the claims are viewed by an independent person. And I hope that you'll look at his report and consider his conclusions going forward.

I'm not making any rulings about whether his conclusion are right or wrong, but I think they're quite informative. And so I think that it's useful and sort of leading up to mediation.

How -- my next concern about mediation is how are we going to pay for it? I know that the parties are motivated to get this resolved, mostly; and in the past, the -- I've always looked to this end of the table to fund things, and I'm not sure that I'm going to do anything different this time.

Do you have some opinions about how the mediator should be paid?

MR. SPIELMAN: My opinion is simply that the parties should pay the mediator's cost as the parties.

Now, again, remember, Judge Comstock, my client and Anita as the current co trustees are actually the only ones who should be having their lawsuit defense financed by the Trust but they have not --

MS. CURTIS: Excuse me. Objection.

MR. SPIELMAN: Okay.

THE COURT: Let him finish, and I'll give you a chance to respond --

MS. CURTIS: But this is --

THE COURT: I know.

MS. CURTIS: -- incorrect information that he's saying.

THE COURT: You'll have a chance to respond as soon as he finishes.

STATUS CONFERENCE

FURTHER ARGUMENT BY MR. SPIELMAN:

MR. SPIELMAN: The point, though, Judge, is because I know that there is not an agreement on that point currently, that is why my opinion is each party should pay their own mediation cost.

One -- again, I can't make a representation for Judge Davidson, but I suspect, as he has done for mediations in the past, maybe, Ms. Bayless, you've experienced this with him before, I think he will see a way to not necessarily say, you pay a fee; you pay a fee; you pay a fee; you pay a fee and you pay a fee. I think he will probably find some way to structure it by people that have common interests on one side or the other or something like that. We can certainly talk to him about that. I'm happy to talk -- it's my interest to find a way to convince him to charge as little as possible for this as much as it's to the benefit of everybody else here. So, I'm happy to do that.

If the Court would like to be the one that reaches out to Judge Davidson to sort of explain a

little bit of the back story, maybe that's appropriate that would make people feel more comfortable, we will all have a chance to present our view of the case to Judge Davidson in advance of the mediation because he asks for premediation briefing material, premediation statement. I know he would take phone calls from folks if they would rather handle it that way.

I think that all of the issues that are being expressed as concerns about the mediation process, all of them have solutions, and perhaps the attorneys are more aware of this just by the nature of what we do.

But particularly with Judge Davidson, he has seen and done it all in his time on the bench. As difficult as this case has been for people particularly on an emotional level, he would have seen this level before, and he will know how to massage everybody's concerns and the law and the facts.

Again, I can't say strongly enough -- even if it's not to my client's benefit when it's all said and done, that I think he has the ability to get everybody, you know, on the straight and narrow.

STATUS CONFERENCE

ARGUMENT BY MS. BAYLESS:

MS. BAYLESS: Judge, I agree. The question was how do we pay for it? And I don't see how

it makes sense to create another controversy among everybody to not want it, those who don't want it to begin with to think it may be a waste of time. I don't understand why -- I'm not even sure why Mr. Spielman makes this suggestion. I would think that we would have the Trust pay for it, and it can be divided as cost as may need to be part of the settlement just like we dealt with Mr. Lester. I don't know why this is -- that was, frankly, I viewed, anyway, an attempt by the Court to move everything in the direction of trying to work toward a resolution. I don't think the mediation is even more so that way, and I don't know why it's going to be probably less money. I don't know why it should be controversial to deal with it as a cost of getting this case resolved and deal with that and the resolution, but that's just my two cents.

THE COURT: Well, I like the suggestion that if Judge Davidson is amenable to that, to let him kind of work that out as part of the mediation, and perhaps that's the route we need to go.

Ms. Curtis, you have -- you wanted to speak?

STATUS CONFERENCE

FURTHER ARGUMENT BY MS. CURTIS:

MS. CURTIS: Basically, I just -- people

are formulating their opinions by talking to parties in the case, and it's fairly obvious that no one has read everything starting with the original petition in the federal court.

I sent my sisters a couple of demand letters after my mother passed away, and I gave them every opportunity to cure and save face. And I told them, "If you don't give me an accounting which has been owed for weeks now," and then I gave them 60 days, that I'd have no alternative, and that I reserve the right to file suit against them.

And here we are, almost five years later. Vacek & Freed sold my parents' peace of mind and then betrayed them because my sister, Anita, developed a relationship with Candace Freed. And there is evidence in the record now that shows that. And I'm willing to come to a conclusion, but we can't have all these attorneys. Amy and Anita are on their third attorneys now. And so, how much longer do my brother, Carl, and I have to spend, money, time and emotional stress to get what our parents gave to us to begin with? And that's all they want - not a penny more/not a penny less.

THE COURT: Well, often when things get to this point when you're five years down the road in litigation and people are in the positions that you find

yourselves today, often what it takes is going to a good mediator and getting everyone in the same room or at least the same building and really looking at the issue, perhaps, with fresh eyes, and finding the reality that there's a better way to resolve this whole game.

MS. CURTIS: I want to look at my sisters and my brother in the eye in the same room. I mean, it's just -- I've been able to talk to Carole until she got an attorney and then I couldn't speak to her anymore. I can't talk to Amy and Anita. I tried to call them early on. I just -- this is a family. We don't need these outside people in here paying money for them to draw conclusions when they don't know what's going on. And so I just --

THE COURT: And I appreciate your bringing that emotional side of it because I think that's what all of this sometimes comes down to is, the emotions that are involved. And if, you know -- I'm glad that you're saying this here today. All of these attorneys, I'm sure, are hearing you, are hearing your position; and I know that they're aware of the emotions -- the emotional responses from their own clients. And perhaps, perhaps your wish will come true. Perhaps we'll get to mediation, and you'll be able to sit in a room and reach some kind of understanding.

I don't have a problem calling Judge Davidson if nobody has a problem with my doing so. So, I'll put a call into him. I know him. He was the scout master of my son's scout troop. So, I'll put a call into him, and we'll see if we can move that piece forward.

STATUS CONFERENCE

FURTHER ARGUMENT BY MR. MENDEL:

MR. MENDELL: I would just like to add, besides Judge Davidson, I don't have any problem with Judge Coselli. I've been in front of Judge Coselli when he was a mediator before he got on the bench. He's excellent.

In terms of the fee, I'm open to how the mediator would want to handle it. But the vast majority of mediators, as the Court is aware, expect people to have some sort of an investment, and a great investment is to come out of pocket and pay for it. So, I would oppose that the Trust pays for everybody's pro rata share. Everybody needs to get out their checkbook and pay the mediator regardless of how the fee is structured.

THE COURT: Okay. I understand.

MS. CURTIS: I can't do that. I work full time. I have no retirement. I have to do without

things to come to Houston which I'm more than happy to do, but I don't have extra money to throw away on more wasted time. And that's why I didn't hire an attorney to begin with. My brother shouldn't have had to hire an attorney.

THE COURT: Well, Ms. Curtis, Ms. Curtis, please. Therein lies the rub. If this is a waste of time then why are we here? You know --

MS. CURTIS: To get resolution.

THE COURT: -- we need to move this case forward, and most of the people in this room feel like this is the best way to move it forward.

MS. CURTIS: I'd like to move it forward by scheduling the summary judgments.

COURT'S RULING

THE COURT: Okay. We're going to go to mediation first. And so I'm going to contact Judge Davidson. I'll get information about his fees, and I'll explain the issues and --

MS. CURTIS: Okay. I have a personal friend in Houston that I've known for 30 years. He is also a mediator, I understand now; is that a conflict if I suggest that we contact him as well?

THE COURT: I don't want to get into what we've had in prior hearings with everyone objecting to

people who are suggested. I think that Judge Davidson is a good choice. He's going to be a strong mediator, and I don't want to take lightly the choice of mediator in this case because I don't want to waste your time. I want to get to a mediation with somebody who can make things happen. And I'm not saying that your buddy, your friend, can't make that happen, but I am concerned that there are, you know, you have several siblings who are going to stand up and object for the reasons that I just mentioned. And I know where that's going to go, and I don't think that it's a good idea to go down that road at this point. So, I'm going to call Judge Davidson and see how that will work out.

MS. BAYLESS: I just have a question on timing.

I'm assuming, and maybe I shouldn't say, that you will be dealing with the motion to transfer first so that that's part of what is being mediated and maybe that's not what you had in mind.

I think that there is some merit to having everybody in the room. I recognize Mr. Reed is going to stand up and say he doesn't want to be in the room, but, you know, we need to deal with that. And I think Judge Davidson could deal with all of these issues very well. And if that loose end is left out there, I don't know if

it will impact being able to get this case over. I have no -- I don't know.

THE COURT: That's a good point. I don't know that we need to transfer the case over here before that happens if we can get some buy-in from the folks involved in the district court case to be a part of that negotiations of the mediation. I don't know whether that's possible, but it seems like if we can get to mediation and get every piece of this resolved, that would be a lot more cost efficient than going through the transfer and getting all of that done.

What I'm saying is you guys don't all have to be in this court in order to negotiate a settlement.

Do you want to respond to that?

MS. BRUNSTING: This is something I spoke with Darlene about is because somehow my brother brought this suit against Vacek is somehow, I think all of us are party to it somehow but without our knowledge, we don't know how this case is going to impact the rest of us and so that's why I spoke with Darlene, and said I'm a bit concerned about going to mediation when I don't know the outcome of this case yet. And so well this case will have some impact on the rest of this. So, that is a valid concern that I have.

THE COURT: Mr. Reed, what's your position

about participating in a mediation?

MR. REED: I think the biggest issue that we have is you or someone has to be appointed or has to appoint someone on behalf of the estate. Right now, if I went to mediation, I would have no one to negotiate with. So, that's the problem by sending a malpractice case is I have, technically, five people I have to deal with that I really need -- I can only really deal with one person that's actually absent right now which is what's delaying the malpractice case from being dismissed.

So, I mean, if you send us to mediation, what you're going to have to do is appoint somebody for us to negotiate which means you're actually appointing someone on behalf of the estate. So, that creates to me a big issue that is, again, outside of, really, what we need to deal with today.

THE COURT: How do the rest of you -- how do the rest of the attorneys in the room feel about whether we can get to a resolution?

MR. MENDEL: I think we can get to a resolution. I mean, if everybody else on this -- in this particular case agrees to an outcome and a resolution for Mr. Reed, then, as I see it, we don't necessarily need to have someone appointed before they

come over to the mediation. I mean, if everybody is in agreement then it becomes a moot point.

THE COURT: And if you can reach an agreement that a resolution will be reached then you could, perhaps, agree to appoint a temporary administrator who could make decisions on behalf of the estate --

MR. SPIELMAN: And that's just the point, Judge. If you backtrack beyond Mr. Lester's appointment, the competing applications before the Court are from my client and from Ms. Curtis. So, if the mediation goes well, those two competing next in line, allegedly executors, can sign off on a deal that would then be able to resolve everything.

MR. REED: It's not that the deal can be worked out, it's, at mediation, I have to go to five different rooms to negotiate the deal. So, maybe his client says, okay, I give a million bucks to the estate - that's great; but Ms. Curtis wants $2 million. So, then all of a sudden, I've got to deal with one of the four. Maybe I get four out of the five. And the point is you need one voice for the entire estate, and you're not going to get it with me trying to negotiate with five people at mediation.

THE COURT: Well, at some point, all five

of those people are going to have to negotiate something to move forward rather it's who's going to be the administrator or the executor going forward. I think that that negotiation is better to take place at the mediation than outside of it.

MR. REED: I think the problem you're sending us to mediation with is now we have one extra level, and we already have too many levels of things we need to negotiate. It's going to take almost the entire mediation, if it is successful, to deal with just the sibling issue, and now you're adding the malpractice case on top of that to see if, you know, whether all four or five or one or two agrees with how much money the malpractice case is worth defending at all.

So, I think you're adding too much to the puzzle to what's already going to be a difficult mediation.

THE COURT: I don't know that the mediation will be successful without that, though. And I think that I kind of like the complication that it has. You know, the more cards on the table, the more you can mix up the deck, am I wrong? It seems like everyone has an interest in going forward. Does anyone disagree with that other than, I'm sorry, Mr. Reed?

MS. CURTIS: I don't disagree. And, in

fact, it's Candace Freed who drew up these illegitimate papers - whether they were signed or not - she's the one that started this. All five of us have been damaged by what Candace Freed did.

I'm happy to let Amy be executor if Neal will represent the executor in this mediation and in the case against Vacek & Freed because it's not malpractice - it's breach of fiduciary. But I just wanted to get it moved along, okay. So, now you've got me convinced that mediation is maybe the way to go, but I don't want any more road blocks for one reason or another.

Why can't Amy be executor? No, let Neal take that ball and run with it and we'll all agree.

MS. BAYLESS: Well I don't know if my clients will agree to that today, but I don't think we have to do -- I don't think we have to go to that level. If we can reach an agreement, then we know we need a temporary person just for purposes of approving a settlement and, you know, moving forward. I don't think -- I don't see any reason why Judge Davidson can't deal with all of those issues. But if he doesn't deal with all of those issues, I don't think -- I think we run a greater risk of not getting the case resolved.

And, frankly, I would think that the law

firm would be delighted if the case could get resolved.

THE COURT: And I hate for you guys to reach a decision about all of your issues and then have to go to another mediation to resolve all the issues in the district court case, particularly, if, you know, if it's decided that it needs to be grabbed and transferred over here.

MR. REED: But it's taking longer, Your Honor, if the case is not settled at mediation. Isn't it somebody is still going to have to be appointed at that point to bring the claims, still, against the malpractice?

THE COURT: Which comes first, you know?

MR. REED: The point is that Mr. -- you know, if we go back to Mr. Lester's report who already, you know, looked at it, looked at the issues and said the writings were correct, we have the malpractice case that's been pending for three years that no one at this point has been able to prove any evidence of malpractice, whatever the claims would be. So, you're wanting us to go --

THE COURT: Well, I'm not sure that Mr. Lester's report says that you win.

MR. REED: I'm not saying that, Your Honor. What I'm saying is I think it's going to be too

difficult for a malpractice case to be negotiated at a mediation with the five siblings we have here without one voice --

MR. MENDEL: I see it that it needs to be a global deal, and if we can't work something out with Vacek & Freed, then the mediation fails. But I'm confident somebody like Judge Davidson can pull this thing together.

THE COURT: And I tend to agree. And, you know, I was -- I would hope that you and Ms. Foley would agree to participating in this mediation. And I'm still considering the motion to transfer, but I have to say if you guys are not willing to consider, that encourages me to grant the motion to transfer just to get everything over here so that we can try to get it settled.

MR. REED: And I don't want you to have a misvoid [sic] that we're not agreeable to going to mediation. My concern is more if I go to mediation, who am I negotiating with? And the problem is I am being sued -- my client is being sued by the estate. The estate right now doesn't have a representative.

So, my concern is, maybe I didn't express it well enough earlier, is not the mediation itself in going - it's who do I negotiate with because I'm dealing with five separate demands because the family can't

speak, and I think that's clear. They can't speak at this point as a whole.

THE COURT: I understand. And I think that Judge Davidson's qualified. He's capable of seeing the big picture and putting all those pieces together and dealing with that.

MS. BAYLESS: And, frankly, Judge, I think I'm going to have to provide the information that Judge Davidson needs about why the claims are filed to begin with. And it doesn't matter how many times you say there is no proof, there is no evidence - the point is, Judge Davidson is going to have to negotiate this thing. There is proof, there is evidence, and I can take the laboring of presenting some kind of summary to him so that he understands the case from its inception and can deal with that case.

The idea that, well, there is nobody right now because my client had resigned so there's nobody to deal with this. Let's jump in there and take advantage of it and everything says there is no way to prove this case, there is no way to do that. That's what Judge Davidson will be trying to deal with, and I can provide him with the information and the evidence that does inform him about the case. And it's out there, and they know it's out there. So, we can get past that.

I think it a lot more efficiently if they agree to deal with the mediation and everything can be dealt with that way, but I tend to agree - if they can't do that by agreement, then we're right back where we were in this suit about what do we do with that case because that case may very well keep us from resolving this case. Even a non lawyer in the room has said that today. So, you know, I think that's pretty obvious.

THE COURT: It sounds to me like everyone except Mr. Reed agrees with that.

Do you need to get back with Ms. Foley in order to get me an answer on whether you will voluntarily participate?

MR. REED: We'll voluntarily participate. I'm just expressing my concern of why it's not going to be successful.

THE COURT: And I appreciate that. And that's a level of, you know, difficulty that I think you will need to bring to the mediation and explain to Judge Davidson and have him address that. So, I mean, everyone has voiced complications today that need to come out on the table and need to be part of the mediation. So, I'm glad that you're all here and voicing those opinions.

So, I think we all agree that I'm going to

call Judge Davidson. Is there anything else that needs to be discussed today? Is there any -- is there any timing issues that I need to make Judge Davidson aware of?

MS. BAYLESS: Well there is a trial setting in May in the district court.

MR. MENDEL: I don't think that one is going to stick given the current posture --

MS. BAYLESS: Having gone through that argument before, I don't know that I would take that for granted.

MR. MENDEL: You're right.

MS. BAYLESS: That's pretty much upon us. We're talking. We may not be able to get in to Judge Davidson this month. I don't know what his schedule is but, you know, we're talking about then that does make it a little bit more important the issue of personal representative; in fact, if we're facing that many trials --

THE COURT: Okay. Do we need to reset the motion to transfer at this point? In other words, do I need to have another hearing to have to hear from Ms. Foley from that issue?

MR. REED: I think you should continue it until after the mediation.

THE COURT: And I think I can do that if you guys agree to participate.

MR. REED: Again, I think you're misunderstanding what I was saying.

THE COURT: No. No. No. I hear what you're saying - I'm just confirming it.

MR. REED: Yeah, I hear you loud and clear. And if you would prefer us at mediation, I will be there. I was just expressing to you I think the concerns that convolute the matter even worse, but I hear you loud and clear.

MS. BAYLESS: What's the trial date?

MR. REED: I think it's the 16th, but I will say this. The Court currently, while we're on the trial docket, I think they recognize that we can't go forward with it because we don't have a personal representative. I don't think that they officially debated it, but I think they somehow called us, I'm expressing this court involved them, Your Honor, but I would say -- well, I'll leave it like that.

MR. SPIELMAN: That being said, Judge, probably sooner is probably better than later, you know.

THE COURT: Of course. Yeah, I think everyone wants to get this moving.

MS. BRUNSTING: Because most of us work.

I think each night there's certain meetings that I just can't --

THE COURT: Of course. Why I'm not going to get involved with actually scheduling the day; I'm going to contact him. And I just wanted to know if there are any global problems, but I'll leave it to you guys to, you know, to contact him and find a date that's going to work for everyone. I know that you guys all have your emails and share your email addresses. So, I'm hoping that you can work together and find a date that will be convenient for everyone.

MS. BAYLESS: Speak of that, I don't know if an order has been signed yet. I've got Ms. Smith's withdrawal, but can we have some information about where to serve her like what address or fax --

MS. BRUNSTING: Darlene asked me if it was okay that she send information out, and I said, "Yes, that's okay," but she didn't send it out. I did send it out.

THE COURT: Can you send an email to everyone?

MS. BRUNSTING: We can talk about it.

THE COURT: Including me. I guess you sent me a letter so I got your contact information,

correct? It's on your letter? Ms. Brunsting?

MR. SPIELMAN: Her address, I think, just to be clear, I think what would be useful to everybody would be if you could just let us know your preferred email address, your preferred phone contact. If you do happen to have access to a fax machine for receiving things, that would work too. I think that that covers most of the ways that we can --

THE COURT: And if you could copy me on that as well, that would be helpful. Thank you.

Okay. Anything else?

MS. BAYLESS: One other thing.

I know we held some things, we just held some things while Mr. Lester was doing his thing, and I wonder if it would make some sense to revisit the order that appointed him and the stay provisions and continue those through the mediation date anyway or something or through the next hearing, motion to transfer?

THE COURT: What specifically --

MS. BAYLESS: It just hit me that we've done that. I'm looking at the order right now.

We had talked about it at the hearing that says that the order expires in 90 days. So, I guess --

THE COURT: It doesn't sound like to me that everybody is eager to jump out and do some

discovery and spend more money prior to going to mediation, am I right? So, let's just focus on getting to mediation unless someone needs something specific in writing.

MS. BAYLESS: If I find the order, I'll let --

THE COURT: Thank you everybody for being here, particularly Mr. Lester for coming.

* * * * *

The State of Texas)
County of Harris)

I, Hipolita Lopez, Official Court Reporter in and for the Probate Court Number Four of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $334.00 and was paid by Ms. Candace Curtis.

WITNESS MY OFFICIAL HAND this the 28th day of March, 2016.

/s/ Hipolita G. Lopez
HIPOLITA G. LOPEZ, Texas CSR #6298
Expiration Date: 12-31-16
Official Court Reporter
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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
January 9, 2013
Lyle W. Cayce
Clerk

No. 12-20164

CANDACE LOUISE CURTIS,

Plaintiff-Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subject-matter jurisdiction in the wake of the Supreme Court's decision in Marshall v. Marshall.[1] The Plaintiff contends that, under Marshall, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

[1] 547 U.S. 293 (2006).

I.

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.[2] Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis ("Curtis") filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively "the Defendants") based on diversity jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against "wasting the estate," and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis's application for a temporary restraining order and injunction because the Defendants had not

[2] The signed copies of the Brunstings' Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.

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been served with process. In the order, the district court judged noted that it "appears that the court lacks subject matter jurisdiction over the claim(s) asserted." On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants' contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a sua sponte order dismissing the case for lack of subject matter jurisdiction. In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

II.

This Court reviews de novo a district court's dismissal for lack of subject-matter jurisdiction.[3]

III.

Although a federal court "has no jurisdiction to probate a will or administer an estate,"[4] in Markham v. Allen, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

> [F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heris' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume

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[3] Borden v. Allstate Ins. Co., 589 F.3d 168, 170 (5th Cir. 2009).

[4] Markham v. Allen, 326 U.S. 490, 494 (1946).

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> general jurisdiction over the probate or control of the property in the custody of the state court.
>
> Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.[5]

Sixty years later, in Marshall v. Marshall, the Supreme Court expressed concern with lower courts' interpretation of Markham, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."[6] Thus, the Supreme Court clarified the "distinctly limited scope" of the probate exception,[7] explaining:

> [W]e comprehend the 'interference' language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.[8]

The Marshall Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant]

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[5] Id. (internal citations omitted).

[6] 547 U.S. at 311.

[7] Id. at 310.

[8] Id. at 311–12.

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seeks an in personam judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a res in custody of a state court."[9] After Marshall, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) "seek[ing] to reach a res in custody of a state court" by "endeavoring to dispose of [such] property."[10]

As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, Marshall requires 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. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise in rem jurisdiction over a res in the custody of another court. Both of the Brunstings' Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.[11] However, nothing suggests that the Texas probate court currently has custody or in rem jurisdiction over the Trust. It likely does not. Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and

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[9] Id. at 312 (internal citations omitted).

[10] Id. at 312–13.

[11] At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.

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therefore are not part of the decedent's estate.[12] In other words, because 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. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.[13] Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

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[12] See 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. § 10:83 ("Any property held in a revocable living trust is not considered a probate asset . . . ."); 2 EST. TAX & PERS. FIN. PLAN. § 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust.'"); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to probate administration . . . .").

[13] Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.

17-20360.1465

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

CANDACE LOUISE CURTIS	§	
	§	
	§	CIVIL ACTION NO. H-12-CV-592
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING, and	§	
AMY RUTH BRUNSTING	§	
	§	
	§	

AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

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

CANDACE LOUISE CURTIS	§	
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	§	CIVIL ACTION NO. H-12-CV-592
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Amy Ruth Brunsting
AMY RUTH BRUNSTING

Amy Ruth Brunsting
Sworn to and signed before me by ____, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

2015-45113 / Court: 055

9. Sept. 4, 2015 Noon **JOINT PRETRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Joint Pretrial Order by this date.** Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. Sept. 11, 2015 10:00 A.M **PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.**

11. Sept. 14 - 18, 2015 **TRIAL.**

Signed this 19 day of February, 2015.

C. Austin
Judge Presiding

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COUNTY CLERK
HARRIS COUNTY, TEXAS

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FILED
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Stan Stanart
County Clerk
Harris County

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PROBATE COURT 4

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, et al	§	

RESPONSE TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

Defendant Anita Kay Brunsting files this response to Candace Louise Curtis' Motion for Distribution of Trust Funds and this response to Carl Brunsting's Motion for Distribution of Trust Funds and would respectfully show the Court as follows:

I. Summary of the Argument

1. Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.

2. Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.

3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.

4. If the Court finds the *in terrorem* clause is enforceable, then Candace and Carl have no right to any distribution from the trust.

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EXHIBIT

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II. Argument & Authorities

Candace and Carl seek distributions from the trusts to pay their creditor-attorneys.

Neither Candace nor Carl cite any provision in the trust instruments that would allow for the requested distributions. This is a tacit admission that such distributions are not authorized by the trust instruments.

Neither Candace nor Carl cite any legal authority that would allow for the requested distributions. This is a tacit admission that such distributions are not permitted by any legal authority.

Since there is nothing in the trust instruments or in any legal authority that allows the requested distributions, the motions must be denied.

A. The Brunsting Family Living Trust.

With respect to distributions under the Brunsting Family Living Trust, the instrument provides:

> i. Distributions of Net Income
>
> Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the net income from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.
>
> ii. Distributions of Principal
>
> Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the principal from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.[1]

[1] Exhibit 1, Restatement of the Brunsting Family Living Trust, pages 10-1 to 10-12.

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Furthermore, the trust instrument prohibits the trust from being charged with a beneficiary's debt:

> No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.[2]

Finally, the trust instrument provides:

> All trusts created under this agreement shall be administered free from the active supervision of any court.[3]

B. The Qualified Beneficiary Designation.

With respect to distributions under the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), the instrument provides:

> The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for the benefit for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as Trustee shall deem appropriate for such distributees' health, support, maintenance, and education.[4]

Furthermore, the QBD contains spendthrift provisions that prohibit the requested distribution:

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[2] Exhibit 1, Restatement of the Brunsting Family Living Trust, page 11-1.

[3] Exhibit 1, Restatement of the Brunsting Family Living Trust, page 4-5.

[4] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 7-8.

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> [N]either the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary.[5]

The QBD stated purpose includes:

> (1) To protect trust assets and income from claims of and interference from third parties; and
> (2) To protect the beneficiary against claims of third parties.[6]

Finally, the QBD states:

> It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution, or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will.[7]

C. Attorneys Fees are not "Health, Education, Maintenance and Support."

Under both the Brunsting Family Living Trust and the QBD, the distributions are: (1) subject to the sole and absolute discretion of the trustee; and (2) as the trustee deems advisable for the health, education, maintenance and support of a beneficiary. Carl's and Candace's attorneys' fees

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[5] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

[6] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 5-6, ¶¶ 4 and 10.

[7] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

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sought in their motion are not for their health, education, maintenance and support.[8] Accordingly, the requested distributions are not authorized by the trust.

D. The Requested Distributions Violate the Spendthrift Provisions.

The sprendthrift provisions plainly state they are designed to prevent interference and claims of third parties. Candace's and Carl's attorneys are third parties. When the spendthrift provisions of the trust and the *in terrorem* provisions are analyzed together, it becomes abundantly clear that the trust was not intended to pay Candace's and Carl's attorneys fees in this case. Accordingly, the requested distributions are prohibited by the trust.

E. There is No Justiciable Case or Controversy with Respect to the Request Distribution.

In the case of *Di Portanova v. Monroe*, the First District Court of Appeals explained:

> Under a discretionary trust, the beneficiary is entitled only to the income or principal that the trustee, in his discretion, shall distribute to the beneficiary. The beneficiary of a discretionary trust cannot compel the trustee to pay him or to apply for his use any part of the trust property, nor can a creditor of the beneficiary reach any part of the trust property until it is distributed to the beneficiary. A court cannot substitute its discretion for that of a trustee, and can interfere with the exercise of discretionary powers only in cases of fraud, misconduct, or clear abuse of discretion.
>
> A court of equity has no right to interfere with and control, in any case, the exercise of a discretionary power, no matter in whom it may be vested; a corporate body or individuals, the aldermen of a city, the directors of a bank, a trustee, executor or guardian; and I add, that meaning and principle of the rule, and the limitations to which it is subject, are in all the cases to which it applies, exactly the same. The meaning and principle of the rule are, that the court will not substitute

[8] Although defendant was unable to find a case directly on point, the case of *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651 (Tex. 2013) appears instructive. The Texas Supreme Court held that attorneys fees in a divorce proceeding were not "necessaries." Defendant recognizes that there is a difference between "necessaries" and the HEMS standard, but nevertheless believes the HEMS standard would not include plaintiffs legal fees in the case at bar.

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> its own judgment for that of the party in whom the discretion is vested, and thus assume to itself a power which the law had given to another[.]
>
> In the absence of evidence of mala fides, the courts are disinclined to interfere where the trustee has been given discretionary powers . . . . The court will refuse to review his decision in the absence of a showing that he did not exercise his discretion in good faith or that his decision was unreasonable; for the trustee in such case stands in the position of an arbitrator.[9]

The First District Court of Appeals ultimately held that the ultimate issue decided by the trial court did not present a justiciable controversy for the trial court to resolve because the issue should have been left to the Trustees' discretion.[10]

Here, Candace and Carl ask this Court to usurp the powers of the trustees and substitute the court's discretion for that of the trustees in violation of the trust. The Court has no jurisdiction to make such determination, because there is no justiciable controversy for the trial court to resolve. There is no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.[11] Even if Candace and Carl made such allegations, there is no evidence to support such allegations.

F. No Contest Clause - Carl and Candace May Not Have An Interest.

Both Carl and Candace appear to concede that they have violated the trust's *in terrorem* clause. Both filed a declaratory judgment action asking this Court to rule that the trust's *in terrorem* clause is overly broad, against public policy, and not capable of enforcement, but neither challenges

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[9] *Di Portanova v. Monroe*, 229 S.W.3d 324, 330-331 (Tex. App.–Houston [1st Dist.] 2006, pet. denied)(internal citations omitted).

[10] *Id.* at 331.

[11] *See* Candace's Motion and Carl's Motion.

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that their acts to date violated the *in terrorem* clause.[12]

If it is determined that the trust's *in terrorem* clause is capable of enforcement, then Carl and Candace do not have an interest in the trust.

If Carl and Candace do not have an interest in the trust, then there is no right to a distribution. Thus, until the Court resolves the *in terrorem* clause issues, there cannot be distributions to Carl and Candace. Furthermore, even if the *in terrorem* clause issues are resolved in favor of Carl and Candace, the requested distributions cannot be made for the reasons discussed above.

III. Prayer

For these reasons, Defendant Anita Kay Brunsting prays that Candace's and Carl's motion for distribution of trust funds be denied and that Defendant Anita Kay Brunsting receive all other relief, general and special, legal and equitable, to which she or the trust may be entitled.

Respectfully submitted,

/s/ Brad Featherston

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Counsel for Anita Kay Brunsting
In Capacities at Issue

[12] Exhibit 3, Carl's First Amended Petition; Exhibit 4, Candace First Amended Petition.

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Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Jason B. Ostrom
Ostrom.Sain, LLP
5020 Montrose Blvd., Suite 310
Houston, Texas 77006
O: 713-863-8891
F: 713-863-1051

Attorney for Candace Louis Curtis

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
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Bayless@baylessstokes.com

Attorney for Carl Henry Brunsting, Individually and as Independent Executor of the Estate of Elmer H. Brunsting and Nelva E Brunsting

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010
O: 713-752-8640
F: 713-425-7945

Attorney for Carole Ann Brunsting

Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, Texas 78132
Pro Se

via e-service or telefax on December 5, 2014, to Jason B. Ostrom, Bobbie G. Bayless, and Darlene Payne Smith, and by email to Amy Ruth Brunsting.

/s/ Brad Featherston

Bradley E. Featherston

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EXHIBIT 1

THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Prepared By

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

11511 Katy Freeway Suite 520
Houston, Texas 77079

Telephone: (281) 531-5800

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THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Article I

Our Family Living Trust

Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

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This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	private
CAROL ANN BRUNSTING	private
CARL HENRY BRUNSTING	
AMY RUTH TSCHIRHART	
ANITA KAY RILEY	

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

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during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

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Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

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Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

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A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

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Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

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Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

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deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

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estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

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such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

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Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

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Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

1. Minimum Distribution

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

2. Distribution Restrictions

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

3. Exclusion of Older Adopted "Descendants"

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

4. Payment of Estate Taxes of Plan Participant

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

5. Delivery of Trust to Plan Administrator

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

6. Distribution to the Beneficiaries

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

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of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

7. Distribution of More Than the Minimum Distribution

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

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Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

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Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Section D. Residence Homestead

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

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3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

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Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

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of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

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2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

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Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

1. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

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2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

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Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

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2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

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Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

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3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

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Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

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The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

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b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

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c. **Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

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Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

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If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

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appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

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Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

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ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

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iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

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i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

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However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

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3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

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CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

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BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

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In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

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TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

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will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

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such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

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2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount..

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

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Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

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Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

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Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

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Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

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2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

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The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Section E. Application to Founders

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

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Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

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Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

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Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

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Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

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Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

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The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

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Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

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the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

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The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

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Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

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The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

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by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

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Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

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Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

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newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

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Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

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4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

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10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

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Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

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Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

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Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

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Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

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as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

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Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

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THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Notary Public, State of Texas

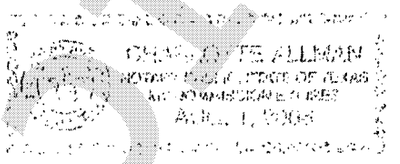

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EXHIBIT 2

QUALIFIED BENEFICIARY DESIGNATION
AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT
UNDER LIVING TRUST AGREEMENT

Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

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the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust

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DISTRIBUTION OF TRUST ASSETS

A. Beneficiaries

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

Beneficiaries	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
CARL HENRY BRUNSTING	1/5
ANITA KAY BRUNSTING	1/5

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B. Division into Separate Shares

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

1. Share for CANDACE LOUISE CURTIS

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

2. Share for CAROL ANN BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

3. Share for AMY RUTH TSCHIRHART

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

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RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

4. Share for CARL HENRY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

5. Share for ANITA KAY BRUNSTING

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

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to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

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7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

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successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

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the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

   a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

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but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

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Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

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thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

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for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

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business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

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as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

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make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

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PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the initial Trust Protector (except as limited by paragraph 4 below) in writing delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). The powers of removal under this paragraph may be limited by the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not

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require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

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incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

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The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

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custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

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state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

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inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:

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1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

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attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

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B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

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Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

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be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

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Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

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the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

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7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

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most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

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separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

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the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

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not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

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Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

   a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

      (i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

      (ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

      (iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

      (iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

   b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

      (i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

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(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

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ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

ACCEPTED and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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EXHIBIT 3

NO. 412.249-401		PROBATE COURT 4
ESTATE OF NELVA E. BRUNSTING, DECEASED	§ § § § §	IN PROBATE COURT NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS
CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting vs. ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§ § § § §

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his First Amended Petition for Declaratory Judgment, for Accounting, for Damages, and for Imposition of a Constructive Trust, and in support thereof would show the Court as follows:

I.

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II.

Parties

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] These estates are collectively referred to herein as the "Estates." In his individual capacity, Plaintiff is referred to herein as "Carl." Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the "Family Trust"). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

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Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. Anita has made an appearance in this action and may be served through her counsel of record. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust. Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust ("Anita's Trust").

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4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister. Amy has made an appearance in this action and may be served through her counsel. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva's death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the "Current Trustees". Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust ("Amy's Trust"). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl's Trust.

5. Defendant Carole Ann Brunsting ("Carole") is Carl's sister. Carole has made an appearance in this action and may be served through her counsel. Carole was named in Nelva's health care power of attorney and was made a joint signatory on Nelva's bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust ("Carole's Trust").

6. Candace Louise Curtis ("Candy") is Carl's sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy. Candy has waived service of citation. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust ("Candy's Trust") of which Anita and Amy are the co-trustees.

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III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

(a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;

(b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;

(c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;

(d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;

(e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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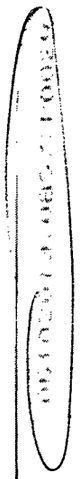

IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistence to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

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powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than $150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

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accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

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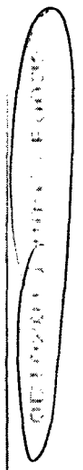

tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

V.

Construction of Trust and Suit for Declaratory Judgment

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

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from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva concerning their estate planning and trusts they established in connection with that estate planning. Those documents include, but are not limited to the Family Trust, the 8/25/10 QBD, the 8/25/10 POA, Nelva's purported resignation as trustee of the Family Trust and Nelva's purported appointment of Anita as successor trustee of the Family Trust. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities relating to those documents.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

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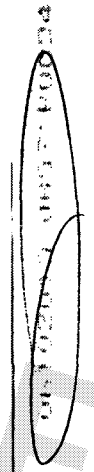

VI.

Demand for Trust Accounting

24. The Current Trustees have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Neither the Current Trustees nor Carole have provided any accounting of the bank account on which Carole was a joint signatory with her mother.

25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

VII.

Breach of Fiduciary Duties

26. Anita and Amy have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole had fiduciary duties to Plaintiff, because of the position of trust she held with her elderly parents and her brother and also because she was a signatory on Nelva's bank account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate

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consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;

b. resisting accountings of property and transactions;

c. failing to abide by the terms of the various trust instruments;

d. failing to preserve property and to prevent losses of property;

e. conveying property in ways which were detrimental and in violation of their obligations;

f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;

g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;

h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;

i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;

j. failing to prevent transfers, gifts, or removal of assets;

k. failing to make appropriate and equal distributions;

l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;

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m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;

n. failing to prevent transactions which were detrimental to their family members and the trusts;

o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and

p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' actions described herein, Plaintiff has been damaged. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants. Plaintiff seeks monetary relief over $1 million.

VIII.

Conversion

29. Plaintiff owned, possessed, or had the right to possession of certain personal property, including, but not limited to, stock, accounts at financial institutions, contents of a safe deposit box, and savings bonds over which Defendants wrongfully exercised dominion or control.

30. Plaintiff has suffered damages as a result of Defendants' actions. Because Defendants' conversion was committed willfully and maliciously, Plaintiff also request that exemplary damages be awarded against Defendants. Plaintiff seeks monetary relief over $1 million.

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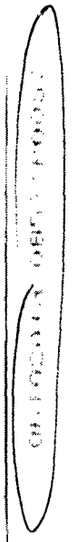

IX.

Tortious Interference with Inheritance

31. Defendants' actions also constitute tortious interference with Carl's inheritance rights. Through duress, manipulation, and outright deception, Defendants obtained valuable assets which would have otherwise passed by inheritance, thus preventing Carl from receiving what he would otherwise have received from his parents' estates.

32. Carl has been damaged as a result of Defendants' actions. Defendants' actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts, all to Carl's detriment. Accordingly, Carl also requests that exemplary damages be awarded against Defendants. Carl seeks monetary damages in excess of $1 million.

X.

Constructive Trust

33. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

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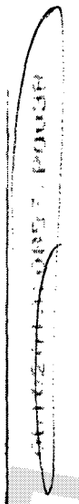

XI.

Fraud

34. On information and belief, Plaintiff alleges that Defendants made material, false representations to Nelva concerning the actions which were being taken with regard to her assets and the Family Trust, as well as the rights, responsibilities, and changes that were being made to the Family Trust. It is also believed that Defendants misled Nelva about the impact those changes would have, both on Nelva's assets and interest in the Family Trust and on Nelva's wishes concerning the disposition of her estate. Defendants knew the representations were false when they were made, or at the very least, Defendants made the representations recklessly. The representations were made by Defendants with the intent that Nelva act on them. Nelva relied on those representations, and as result, Plaintiff suffered injury.

35. Plaintiff has been damaged as a result of Defendants' actions. Because Defendants' actions were made willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants. Plaintiff seeks monetary relief over $1 million.

XII.

Civil Conspiracy

36. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff and interference with Plaintiff's rights, as well as the commission of fraud and fraudulent concealment. Defendants had a meeting of the minds on the object or course of action, and all of the Defendants committed unlawful overt acts to further the conspiracy. Such actions by Defendants amount to a civil conspiracy.

37. Plaintiff has been damaged as a result of Defendants' actions. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of

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Plaintiff. Accordingly, Plaintiff also requests exemplary damages. Plaintiff seeks monetary damages in excess of $1 million.

XIII.

Fraudulent Concealment

38. Plaintiff was not aware of Defendants' wrongful actions because Defendants took affirmative steps to deceive Nelva and Carl and to conceal their wrongful actions from Nelva and Carl. Upon information and belief, such deception included misleading Nelva about what was being done, what she was being asked to sign, why she was being asked to sign it, what would happen if she signed it, and the status of her assets. Carl was not given any information concerning the actions being taken by Defendants. As a result of this affirmative deception by Defendants and Nelva and Carl's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011. In fact, Plaintiff still does not know the full extent of his claims.

XIV.

Discovery Rule

39. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

XV.

Tolling of Limitations

40. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

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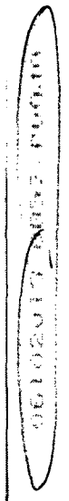

XVI.

Conditions Precedent

41. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

XVII.

Prejudgment Interest

42. Plaintiff is also entitled to prejudgment interest on his claims.

XVIII.

Request for Attorneys' Fees

43. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

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Respectfully submitted,

BAYLESS & STOKES

By: _____
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Telecopier on the 7th day of June, 2013, as follows:

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George W. Vie, III
2228 Mechanic, Suite 400
P.O. Box 1943
Galveston, TX 77553

Darlene Payne Smith
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, TX 77010

_____
BOBBIE G. BAYLESS

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EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§ § §	
VS.	§ §	CIVIL ACTION NO. 4:12-CV-00592 JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§ § § §	JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED PETITION

I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.

2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

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II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.

7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust ("Trust") and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

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IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff , Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

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interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff,and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

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wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance

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with the Texas Property Code.

V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
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(Fed. Id. #33680)
(TBA #24027710)
NICOLE K. SAIN THORNTON
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713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

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

CANDACE LOUISE CURTIS	§	
	§	
Plaintiff,	§	
V.	§	4:12-CV-00592
	§	
ANITA KAY BRUNSTING, AND	§	
AMY RUTH BRUNSTING	§	
	§	
Defendants.	§	

RESPONSE OF DEFENDANTS TO REPORT OF MASTER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting file this Response to the Report of the Master. Defendants desire to clarify certain matters in the report and to provide to the Court relevant background information they provided to the Master and on which the Master relied in his report. To the extent necessary under Rule 53, and to the extent the Court treats any part of the Master's report as a finding of fact, Defendant's clarifying information may also be considered an objection to the related finding of fact, under Rule 53(f)(2) and (3).

RESPONSES TO MATTERS NOTED IN THE REPORT

1. In section II of the Report, at page 3, the Master notes that counsel for Defendants provided a letter in explanation of certain distributions on 7/15/2013. In section III of the Report, at page 4, the Master notes that he relied on information and explanations supplied in the 7/15/2013 letter. Another reference to the letter is made in Section VII at page 10. In order that the Court may have the benefit of that information, a true copy of the letter to the Master is attached as Appendix Item 1.

2. In section V of the Report, the Master notes certain exceptions to the Report and references missing documents. The Defendants have complied in good faith with the requests of the Master for information and assistance, which were all reasonable requests. The following explanations or comments address certain of the Master's noted exceptions.

A. At page 6, the Master notes that he did not receive monthly statements for payments on a Bank of America credit card. The payments to the Bank of America credit card were for Defendant Anita Brunsting's trustee fee compensation. The Master was advised of the payments to a personal card in the 7/15/2013 letter at paragraph 1. Other prior counsel for the Trust had calculated a reasonable fee for Ms. Brunsting, as also related in the 7/15/2013 letter. The payments to the credit cards are documented on the bank statements provided to the Master, as he notes.

B. At page 7, the Master notes that statements were not received for Bank of America checking account ending in 9546, from 12/14/2011 to the effective date of the Report. As noted in the 7/15/2013 letter, the Trustee was not a signatory on this account; rather, Defendants' mother placed their sister Carole Brunsting on the account as a Joint Tenant with Right of Survivorship, so Carole could assist with Mrs. Brunsting's day-to-day expenses. The Trustee did transfer funds into this account for her mother and Carole to write checks or make withdrawals for her mother's needs. Defendants believe the referenced account was closed approximately January 2012 but do not have the final statement. It was not obtained by their sister before the Master's tender of the report, but likely can be obtained.

C. The Master further notes that statements were not received for an account with Edward Jones ending in 5-1-6, after 4/26/2013 to the effective date of the Report. Defendants respond that no statements have been posted by Edward Jones after 4/26/2013, and therefore there are no documents that could be provided after that date and through May 31, 2013.

D. The Master further notes that statements were not received for a Chevron dividend investment account ending in 9423, from 12/31/2011 to 5/31/2013. Defendants respond that they are missing statements from 9/11/2012 through 6/9/2013, and no additional statements have been posted by Computershare. Defendants were not able to determine from Computershare why no statements have been posted, but did provide the transaction history to the Master to evidence of dividend reinvestment and that no funds had been removed from the account.

E. The Master notes that statements were missing for an ExxonMobil dividend reinvestment account ending in 6287, from 9/30/2012 to 5/31/2013. Defendants respond that they provided statements to the Master from 9/12/2012 to 5/10/2013 as part of a transmittal of supplemental documents on 7/5/2013. The fact that additional records were provided on 7/5/2013 is referenced at Section II, page 5, of the Master's report. Defendants' transmittal letter to the Master is attached as Appendix Item 2.

F. The Master notes that statements were missing for a John Deere dividend reinvestment account. Defendants comment that they did provide a May 2013 statement to the Master.

3. In Section VI of the Report, addressing Stock Distributed, the Master notes "[a] final accounting of 37.131 shares of CVX stock could not be determined since reports after 12/31/2011 were unavailable for one of the DRP accounts." Defendants respond that they believe the Master is referring to the shares in the survivor's trust Chevron account ending in 7657. The Defendants only have a tax statement for 2012 and did provide a 6/10/2013 statement as referenced in Appendix Item 2. There are currently 38.334668 shares in this account.

4. Additionally in Section VI, at page 9, the Master notes that 95 shares of Met Life Inc. shares were attributed to the Trust "however the only reports reflecting information on these shares were dated late in the review period and did not show whether the shares were available to the estate at the beginning of the period." Defendants did provide the Master in the initial set of documents with an accounting ("the Vacek accounting") that has a schedule B. That schedule is a survivor's trust asset list and there notes a December 2010 value for the same 95 shares of Met Life Inc. stock. This is some evidence as to the shares available at the beginning of the Master's report period.

5. Additionally in Section VI, at page 9, the Master notes that "[o]nly 0.04946 shares of [Deere and Company] were attributed to the estate at the end of the period. No reports reflected the balance as of the beginning of the period and 8.669 shares were not accounted for during the period." Defendants did provide a transaction history at Bates number AABrunsting.Financials004272; also the Vacek accounting shows 9.5807 shares in December 2010 and 9.7125 shares March 2012, while the transaction history provided

to the Master on 7/5/13 evidences 9.9117 shares in the survivor's trust (and none in the decedent's trust). Defendants believe the shares are accounted for.

6. In Section VII, at page 10 the Master notes that he prepared an account titled *Payments to Credit Cards* in the Expense/Distributions section of the Report, and that this account references payments to a Bluebonnet credit card account. The Master does note monthly statements and some supporting documentation were provided for the credit card account. Defendants add that this was their mother's personal credit card and that she allowed caretakers to use it as needed to purchase groceries, medical supplies, and other similar necessaries.

7. Finally, Defendants would emphasize that as to the Stock Distribution Analysis, attached as Exhibit 3 to the Master's Report, all of the distributions noted on that exhibit were during the life of Defendants' mother and at Mrs. Nelva Brunsting's directions. These distributions continued Nelva Brunsting's prior history of gifting and are discussed in several paragraphs of the 7/15/2013 letter.

CONCLUSION AND RELIEF SOUGHT.

8. Defendants are individuals, not financial professionals. They concede, as the Master notes, that they used the Quicken electronic files to maintain Trust records but neither they nor their parents had used a more fully integrated bookkeeping system. Still, Defendants have endeavored to meet their obligations under the Trust in good faith, notwithstanding the number of accounts involved; the transferences upon death of their parents; the transition of client records that resulted from Computershare purchasing BNYMellon; a life insurance trust, farm lease, and other matters. They have provided all

documents they had access to or were able to obtain from providers and vendors within the period of the Report.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court take notice of this filing.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ George W. Vie III
George W. Vie III

Appendix Tab 1

MILLS SHIRLEY L.L.P.

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July 15, 2013

Re: Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting et al* – In the United States District Court for the Southern District of Texas, Houston Division

Mr. William G. West, C.P.A. & Bankruptcy Trustee
Southern District of Texas
12345 Jones Road, Suite 120
Houston, TX 77070

Dear Mr. West:

We previously delivered three binders, a folder, CDs (Bates #s AABrunsting.Financials 002359-004082) and a chart of the Brunsting accounts to you as requested and pursuant to the Court's order. We also delivered an additional binder and CD (Bates #s AABrunsting.Financials 004083-0042832). We want to provide the following information to assist you in your review of the documentation and to provide some background and context you otherwise might not have.

1. Under the terms of the Living Trust and its sub-trusts, the Trustee is entitled to a fee. Anita Brunsting became Successor Trustee on December 21, 2010. Ms. Brunsting consulted with Vacek & Freed, the attorneys who prepared the Living Trust and its sub-trusts, to determine the percentage amount of her fee. Instead of taking her $41,070.08 Trustee's fee in cash, Ms. Brunsting paid her personal credit cards with trust assets and paid for some of her children's college expenses beginning May 5, 2011, through November 8, 2011. During this period, two percent of the trust value was $45,826.00; thus we contend the Trustee's fee was reasonable. (**See Bates 002346**).

2. Mr. and Mrs. Brunsting had a history of making financial gifts to their five children as well as their seven grandchildren. Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses. Mrs. Brunsting continued gifting when she was

Trustee. The financial documents we have provided will not show all of the gifts to the older children and the older grandchildren, since many gifts were made prior to Mr. Brunsting's death. Because Anita and Amy are the youngest children and, in turn, their children are the youngest grandchildren, gifts to them may seem to predominate, when in fact all previous gifts to the older children and older grandchildren may not be reflected in the records. (**See Bates 002341-002343**). Further, prior to Anita becoming Trustee, Mr. and Mrs. Brunsting gave Candace Curtis at least $42,000.00 and loaned her an additional $20,000.00 against her inheritance. After Anita became Trustee, her mother requested that an additional $11,000.00 in gifts be made to Candace Curtis (detailed below). See enclosed spreadsheet detailing gifts.

3. When Anita Brunsting became Trustee in December 2010, Mrs. Brunsting wanted to continue her history of gifting to her children and grandchildren. In May 2011, at her mother's direction, Anita transferred stock from the Survivor's Trust to Amy so that Amy could pay off her mortgage, and in June 2011 transferred stock from the Decedent's Trust to Carole so that Carole could update her home and pay off her mortgage. Note that Mrs. Brunsting wanted to ensure that Amy's and Carole's homes were paid off as she and her husband did the same for Anita in approximately 2005. (**See Bates 002342-002343**). Amy and her husband divorced and Mrs. Brunsting was concerned about the welfare of Amy and her children since Amy's ex-husband terminated his parental rights and was not paying any child support. Mrs. Brunsting also instructed Anita to make gifts to Amy's two children, J.B. and A.B. , and for Anita's two children, Katie Riley and Luke Riley for future car and college expenses. Each of the four grandchildren received 135 shares of Chevron stock from the Survivor's Trust in June 2011. (**See Bates 002343**) Before Anita transferred the stock at her mother's instructions, she consulted with attorney Candace Freed of Vacek & Freed, the attorneys who prepared the Living Trust and its sub-trusts, and accountant Rich Rikkers confirming it was not improper to make these transfers.

4. In November 2010, Mrs. Brunsting sent an e-mail to Amy Brunsting stating Mrs. Brunsting was gifting Amy $13,000.00, although the transfer was not complete until 2011. Specifically, $7,000.00 was given on December 31, 2010, and $6,000.00 was given on January 19, 2011 (**See Bates 002333, 002360**).

5. Mrs. Brunsting informed Anita that she had been giving money to Candace and instructed her to continue to give Candace what she needed. In April 2011, Anita gave $3,000.00 to Candace Curtis. (**See Bates 002334,002374**) In June 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002336, 002384**). In August 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002337, 002395**) In October 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002338, 002404**) In November 2011, Anita gave $2,000.00 to Candace Curtis. In November 2011, Mrs. Brunsting instructed Anita to give $2,000.00 for her son,

Luke Riley's education. (**See Bates 002339, 002408-002409**). Anita distributed $12,585.60 in Exxon stock from the survivor's trust to Candace Curtis in June 2011 for a reserve to help Candace Curtis with expenses, should Mrs. Brunsting passed away.

6. In approximately July 2010, Carl Brunsting became very ill. He was hospitalized and, for a period of time, lived with Mrs. Brunsting instead of his wife, Drina Brunsting. Mrs. Brunsting paid almost $47,000.00 for personal care providers for Carl. (**See Bates 002344-002345**).

7. Anita Brunsting resides in Victoria, Texas, approximately two hours and approximately 120 miles from her parents' home in Houston. Because Anita could not be with her mother on a daily basis, it was not practical for Anita to oversee her mother's daily incidentals. Thus, Mrs. Brunsting placed Carole Brunsting as a Joint Tenant with Right of Survivorship on one of her Bank of America accounts (ending in 9546), so Carole could assist with Mrs. Brunsting's day-to-day expenses. Since Anita was not a signatory on this account she, as Trustee, transferred funds into this account for her mother and Carole to write checks or make withdrawals for her mother's needs. Note that on April 7, 2011, a $3,000.00 gift was given to Candace Curtis from this account. (**See Bates 002336-002340**). (This is in addition to the gifts to Candace Curtis described above.)

8. The Brunsting family home was sold in March 2012 and $433,129.52 was deposited into the Survivor's Trust at Bank of America (account ending in 3523). (**See Bates 002439**) Because the deposits would exceed the FDIC limit, Anita Brunsting transferred $167,000.00 to a Bank of America account ending in 3536. (**See Bates 002459, 002524**) However, this is an account of the Decedent's Trust, not the Survivor's Trust, so the funds were then transferred to a Survivor's Trust savings account at Bank of America (account ending in 8577). (**See Bates 002527, 002576**).

If you have any questions regarding the funds or transfers between accounts, my clients and I will be happy to answer them.

Thank you.

Sincerely,

/s/ George W. Vie III

George W. Vie III

255001/100925.3

Date	Gift	Stock price	amount	Person	purpose
Mom/Dad were trustees					
12/21/2010	trxfr		$ 7,000.00	Amy Brunsting	mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights
1/4/2011	trxfr		$ 6,000.00	Amy Brunsting	mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights
6/22/2009			$ 1,000.00	Amy Brunsting	college fund
7/14/2009			$ 1,000.00	Amy Brunsting	college fund
11/14/2007	chk# 5715		$ 5,000.00	Amy Brunsting	unsolicited gift
1/20/2006	chk# 5143		$ 200.00	Amy Brunsting	
2/11/2002	chk# 3526		$ 200.00	Amy Brunsting	college fund
12/31/2002	chk# 3911		$ 200.00	Amy Brunsting	college fund
	Total Amy Brunsting		$ 20,600.00		
10/2/2009	chk# 6359		$ 1,000.00	Andy Curtis	
2/8/2010	chk# 6518		$ 5,000.00	Anita Brunsting	unsolicited gift
6/24/2009	chk# 6278		$ 1,000.00	Anita Brunsting	graduation gift to me for finishing my doctorate
7/14/2009	chk# 6294		$ 1,000.00	Anita Brunsting	college fund
9/8/2009	chk# 6338		$ 1,000.00	Anita Brunsting	college fund
10/19/2009	chk# 6403		$ 1,250.00	Anita Brunsting	
1/20/2006	chk# 5142		$ 200.00	Anita Brunsting	college fund
1/31/2006	chk# 5155		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
2/21/2006	chk# 5172		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
4/1/2006	chk# 5233		$ 150.00	Anita Brunsting	mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one
1/10/2003	chk# 3920		$ 200.00	Anita Brunsting	college fund
2/11/2002	chk# 3527		$ 200.00	Anita Brunsting	college fund
	Total Anita Brunsting		$ 10,300.00		
3/17/2010	chk # 6386		$ 750.00	Candy Curtis	
1/27/2009	chk # 6124		$ 2,000.00	Candy Curtis	
7/29/2009	chk# 6309		$ 4,000.00	Candy Curtis	
7/8/2008	chk # 5917		$ 2,000.00	Candy Curtis	
8/3/2009	chk# 5944		$ 1,500.00	Candy Curtis	
7/6/2001	trxfr		$ 20,000.00	Candy Curtis	
1/19/2010			$ 5,000.00	Candy Curtis	
3/29/2010			$ 7,000.00	Candy Curtis	
6/22/2010			$ 20,000.00	Candy Curtis	Taken against inheritance (documentation on file w/ Vacek & Freed) expenses, divorce
	Total Candy Curtis		$ 62,250.00		
11/10/2005	chk# 5070		$ 10,000.00	Carl Brunsting	
3/12/2003	chk# 3986		$ 9,000.00	Carl Brunsting	
4/9/2003	chk# 4017		$ 11,000.00	Carl Brunsting	
9/17/2001	chk# 3347		$ 2,000.00	Carl Brunsting	
10/6/2010			$ 25,000.00	Carl Brunsting	medical bills
2010-2011			$ 21,899.61	Carl Brunsting	paid one medical bill ($1565.70) and to caretakers directly for his care from 7/13/2010 through 1/9/2011, (additional days occurred from Jan-April 2011 than included payment to caretakers as well as groceries and his medical supplies, but specific dates in this time period were not recorded)
	Total Carl Brunsting		$ 78,899.61		
6/27/2009	chk# 6285		$ 2,000.00	Carole Brunsting	
2/12/2009	chk# 5794		$ 500.00	Carole Brunsting	
3/18/2008	chk# 5821		$ 250.00	Carole Brunsting	
11/13/2007	chk# 5713		$ 600.00	Carole Brunsting	
1/5/2006	chk# 5129		$ 1,000.00	Carole Brunsting	loan?
7/1/2006	chk# 5287		$ 1,200.00	Carole Brunsting	
3/23/2005	chk# 4785		$ 450.00	Carole Brunsting	
12/8/2005	chk# 5090		$ 1,500.00	Carole Brunsting	
7/2/2005	chk# 4901		$ 350.00	Carole Brunsting	
10/2/2005	chk# 5016		$ 2,500.00	Carole Brunsting	
10/21/2003	chk# 4232		$ 1,000.00	Carole Brunsting	
12/12/2002	chk# 9878 ?		$ 1,500.00	Carole Brunsting	
12/17/2002	chk# 3883 ?		$ 5,000.00	Carole Brunsting	
3/23/2010			$ 7,000.00	Carole Brunsting	
5/18/2010			$ 1,000.00	Carole Brunsting	
10/1/2010			$ 20,000.00	Carole Brunsting	original intent to take against inheritance, but no letter/documentation found to date; will be treated as a gift; to fix house
	Total Carole Brunsting		$ 45,850.00		
10/2/2009	chk# 6358		$ 1,000.00	Kevan Curtis	

Date	Gift	Stock price	amount	Person	purpose
Anita became trustee Dec. 2011					
5/11/2011	1120 shares exxon Survivors trust	$ 81.12	90854.4	Amy Brunsting	to pay off house
	Total Amy Brunsting		$ 90,854.40		
5/10/2011			$ 5,443.22	Anita Brunsting	pay off Luke's truck
6/3/2011			$ 5,750.51	Anita Brunsting	pay off Honda for Katie
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Anita Brunsting	borrowed against inheritance - for college expenses
6/15/2011	160 shares exxon Survivors trust	$ 78.66	$ 12,585.60	Anita Brunsting	borrowed against inheritance - for college expenses
	Total Anita Brunsting		$ 37,360.33		
4/7/2011			$ 3,000.00	Candy Curtis	property taxes
6/8/2011			$ 2,000.00	Candy Curtis	new bed?
6/15/2011	160 shares exxon Survivors trust	$ 78.66	$ 12,585.60	Candy Curtis	for reserve after mom passed away to keep helping her w/ expenses if trust money was not available
8/24/2011			$ 2,000.00	Candy Curtis	expenses
10/26/2011			$ 2,000.00	Candy Curtis	medical bills
11/10/2011			$ 2,000.00	Candy Curtis	travel to see mom
	Total Candy Curtis		$ 23,585.60		
6/15/2011	1325 shares exxon Decedents trust	$ 78.66	$ 104,224.50	Carole Brunsting	to pay off/fix house
	Total Carole Brunsting		$ 104,224.50		
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	J.B (grandchild)	gift for future car/college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	A.B. (grandchild)	gift for future car/college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Katie Riley UGMA (grandchild)	gift for college exp
6/14/2011	135 shares chevron Survivors trust	$ 100.60	$ 13,581.00	Luke Riley (grandchild)	gift for college exp

Appendix Tab 2

MILLS SHIRLEY L.L.P.

ESTABLISHED 1846

400 WASHINGTON BUILDING
2228 MECHANIC STREET
P.O. BOX 1943 (77553)
GALVESTON, TEXAS 77550
(409) 763-2341
FACSIMILE (409) 763-2879
www.millsshirley.com

Maureen Kuzik McCutchen
Partner
Board Certified Estate Planning and Probate Law
mmccutchen@millsshirley.com
Direct Line 409-761-4023; Houston Line 713-571-4223

July 5, 2013

Re: Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting et al* – In the United States District Court for the Southern District of Texas, Houston Division

Mr. William G. West, C.P.A. & Bankruptcy Trustee
Southern District of Texas
12345 Jones Road, Suite 120
Houston, TX 77070

Dear Mr. West:

Enclosed are a binder and a CD (Bates #s AABrunsting.Financials004083-004283) containing additional financial documents. We are working with our clients to obtain the outstanding statements as quickly as possible.

- **Bank of America account #[redacted]1143**
  - December 1, 2010 - December 31, 2010 statement
  - January 1, 2012 - January 31, 2012 statement
  - February 1, 2012 - February 29, 2012 statement
  - Missing March 1, 2012 – March 31, 2012, April 1, 2012 – April 30, 2012 (requested from Bank of America)
  - *Note account was closed in April 2012, not April 2013 – Quicken account erroneously noted it was closed in 2013*

- **Bank of America account #[redacted]3523**
  - May 10, 2013 - June 7, 2013 statement
  - Copy of retainer refund and deposit slip
  - **Complete**

- **Bank of America account #[redacted]3536**
  - May 14, 2013 – June 11, 2013 statement
  - **Complete**

- **Bank of America account #[redacted]8577**
  - April 23, 2013 – May 22, 2013 statement
  - May 23, 2013 – June 20, 2013 statement
  - **Complete**

- **Bank of America account #[redacted]9546**
  - December 31, 2010 – December 14, 2011 statements
  - The statement reflecting the $1,540.47 deposit on January 3, 2012, is in the possession of Carol Brunsting. Anita Brunsting was not on this account. We requested the statement from Carole Brunsting and the deposit into the account and hope to have it shortly.

- **Bank of America account #[redacted]6643**
  - Missing April 14, 2011 and March 16, 2012 statements
  - This account was owned by the Brunsting Life Insurance Trust and is not part of this lawsuit. All proceeds of this account were evenly distributed to the five Brunsting children.

- **Edward Jones account [redacted]5-1-6**
  - November 26, 2011 – December 31, 2011
  - Missing April 26, 2013, to date statements because no statements have been posted by Edward Jones
  - **Complete**

- **Edward Jones account [redacted]6-1-9**
  - Missing May 31, 2013, to date statements because no statements have been posted by Edward Jones
  - **Complete**

- **Edward Jones account [redacted]9-1-8**
  - November 26, 2011 – December 31, 2011
  - Missing May 31, 2013, to date statements because no statements have been posted by Edward Jones
  - **Complete**

- **Edward Jones Portfolio Summary November 26, 2011 – December 31, 2011**

- **Bluebonnet Visa [redacted]-6626**
  - this account was closed in December 2011 – the last statement shows a zero balance
  - **Complete**

- **Chevron/Computershare [redacted]9423**
  - June 10, 2013
  - Missing September 11, 2012 – June 9, 2013 statements – no additional statements are available, please refer to transaction history
  - **Complete**

- **John Deere/Computershare [redacted]6354**
  - May 1, 2013
  - Missing February 3, 2010 to April 30, 2013
  - Note the Trustee had major difficulties obtaining statements from BNY Mellon
  - There were only 9 shares of stock in this account

- **Exxon/Computershare [redacted]0102**
  - March 24, 2011 to date statements – Mrs. Nelva Brunsting split this account between [redacted]**7769 and** [redacted]7777 in March 2011 so there are no statements after March 2011
  - **Complete**

  - **Exxon/Computershare [redacted]7769**
    - June 11, 2011, June 15, 2011
    - March 24, 2011 Direct Registration Advice (2)
    - March 24, 2011 Account Summary
    - June 15, 2011 Direct Registration Advice
    - June 11, 2012 Account Summary
    - September 12, 2012 Direct Registration Advice
    - September 12, 2012 Account Summary
    - October 10, 2012 Account Summary
    - No other statements available
    - Note that in September 2012, Amy Brunsting was added as a Co-Trustee and the account was changed to [redacted]**6261** and [redacted]**3319,** so there are no statements after September 2012
    - **Complete**

      - **Exxon/Computershare [redacted]6261**
        - September 12, 2012 Reinvestment Confirmation
        - September 12, 2012 Account Summary
        - December 10, 2012 Account Summary
        - 2012 Form 1099
        - March 11, 2013 Statement
        - June 10, 2013 Statement
        - **Complete**

      - **Exxon/Computershare [redacted]3319**
        - October 10, 2012 Direct Registration Advice
        - October 22, 2012 Reinvestment Confirmation
        - December 10, 2012 Account Summary
        - March 11, 2013 Statement
        - June 10, 2013 Statement
        - **Complete**

- **Exxon/Computershare [redacted]7777**
  - September 10, 2012 Account Summary
  - September 12, 2012 Account Summary (2)
  - statements after September 12, 2012 - Amy Brunsting was added as a Co-Trustee and the account was changed to [redacted]**6287** and [redacted]**3301** so there are no statements after September 2012
  - **Complete**

- **Exxon/Computershare [redacted]6287**
  - September 12, 2012 Reinvestment Confirmation
  - September 12, 2012 Account Summary
  - March 11, 2013 Statement
  - June 10, 2013 Statement
  - Missing statements from September 12, 2012, to March 10, 2013
  - Please refer to transaction history

- **Exxon/Computershare [redacted]3301**
  - March 11, 2013 Statement
  - June 10, 2013 Statement
  - **Complete**

- **Computershare/Chevron/Exxon - Decedent's Trust Recent Transactions**
- **Computershare/Chevron/Deere/Exxon – Survivor's Trust Recent Transactions**

Please let me know if you have questions. Thank you.

Sincerely,

Maureen Kuzik McCutchen

MKM/mn/254612/100925.3
Enclosures

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§ § §	
v	§ §	Civil Action No. 4:12-cv-00592
ANITA KAY BRUNSTING, et al Defendants	§ §	

PLAINTIFF CANDACE LOUISE CURTIS'
MOTION FOR SANCTIONS WITH POINTS AND AUTHORITIES
PRELIMINARY STATEMENT

Plaintiff Advised Defendants' Counsel of Ethical Violations and Counsel Refuses to Acknowledge or Remedy this Misconduct.

1. This Rule 11(b) Motion was served via email communication dated April 10, 2016 and via priority mail sent April 11, 2016.

2. Plaintiff included a letter advising Defendants' Counsel that violation of a federal injunction and the orders of a federal Judge are a serious matter, and requested that Counsel advise as to how it would remedy its violations of the remand agreement and order. (Exhibit 8)

3. Counsel was also informed that federal and state rules impose a duty of candor, good faith and fair dealing on attorneys representing clients in the courts, including Fed. R. Civ. P. 11, and that violation of a federal injunction may be viewed more than a mere civil contempt.

4. Defendants responded with additional financial disclosures but did not respond to concerns expressed in regard to violations of the federal injunction and remand agreement. In particular, Defendants' Counsel failed to even respond to their continued violation of the injunction's command to "deposit income into an appropriate account for the beneficiary".

5. Financial disclosures not only reveal Defendants' failure to deposit income according to the injunctive orders of this Court, but also show that, as a consequence, excessive income tax

liabilities have been incurred by the trusts. These avoidable tax liabilities continue to accrue for 2016. The first quarterly estimated tax payment was made April 15, 2016 in the amount of $6,170.00.

6. The current motion seeks sanctions against Defendants and their Counsel for deliberate violations of and abject refusal to obey this Court's Injunction and other Orders, even after having agreed to do so in order to secure a remand to Harris County Probate Court No. 4.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§ § §	
v	§ §	Civil Action No. 4:12-cv-00592
ANITA KAY BRUNSTING, et al Defendants	§ §	

PLAINTIFF CANDACE LOUISE CURTIS'
MOTION FOR SANCTIONS WITH POINTS AND AUTHORITIES

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17-20360.1648

Nature and Stage of Proceedings

1. Plaintiff is one of five siblings. The controversy involves administration and settlement of a family trust purchased by Plaintiff's parents, Elmer and Nelva Brunsting, in 1996, as both a product and a service of Albert Vacek, Jr.

2. Elmer Brunsting passed April 1, 2009 and Nelva Brunsting passed November 11, 2011.

3. Plaintiff Candace Louise Curtis brought claims against Anita and Amy Brunsting in the United States District Court for the Southern District of Texas[1] on February 27, 2012, seeking an accounting and other lawful and equitable relief.

4. On March 6, 2012, Vacek & Freed staff attorney Bernard Mathews, appearing under the letterhead "Green and Mathews", filed a motion for an emergency order accompanied by a false affidavit signed and verified by Defendant Amy Brunsting.[2] (Exhibit 1)

5. On March 8, 2012, in reliance upon the material misrepresentations contained in Defendants' Motion and Affidavit, this Honorable Court dismissed Plaintiff Curtis Pro se Petition sua sponte, under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal.

6. On January 9, 2013 the Fifth Circuit Court of Appeals, in a unanimous decision, reversed and remanded to this Court. Plaintiff Curtis immediately filed for a protective order.[3]

7. On January 29, 2013 Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court.[4]

[1] USDC Southern District of Texas CIVIL ACTION NO. 4:12-cv-00592
[2] See Amy Affidavit Exhibit 1
[3] Candace Louise Curtis v. Anita Brunsting et al., 710 F.3d 406
[4] No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164TH Judicial District Court of Harris County, TX

8. On April 9, 2013 this Honorable Court issued a protective order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval. (Exhibit 2)

9. On April 9, 2013 this Court verbally entered a protective order and on April 9, 2013 this Court published its Memorandum and Order for Preliminary Injunction.[5]

10. Plaintiff Curtis appeared on her Application for Order to Show Cause in October of 2013, but due to a medical emergency her assistant was hospitalized, in a coma and consequently, Plaintiff Curtis was unable to obtain the prepared briefing materials before that hearing.

11. This Court expressed a proper concern over Plaintiff's lack of preparation and advised Pro se Plaintiff Curtis to retain counsel so that the discovery process could proceed. Plaintiff Curtis had difficulty finding counsel within the Court's time frame and had the misfortune of retaining Jason Ostrom.

12. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants would agree to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting as an involuntary plaintiff, thus polluting diversity and enabling a remand to the Harris County Probate Court.

13. Defendants agreed, as a condition of the remand arrangement, that they would honor this Court's injunction and all orders entered by the federal Court throughout the state Court proceedings, as if there had been no remand.

14. The remand order (Exhibit 3) is contained in this Court's record as document No. 112 and concludes with:

[5] Document 45 in this Courts record.

> *It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.*
>
> *SIGNED on this 15th day of May, 2014.*

Issues Presented

15. Plaintiff Candace Louise Curtis (Curtis) respectfully submits this Motion for Sanctions against Defendants and their Counsel pursuant to Fed. R. Civ. P. 11(b) and this Court's inherent power to vindicate its dignity and authority.

16. The current motion seeks sanctions against Defendants and their Counsel for deliberate violations of, and abject refusal to obey, this Court's Injunction and other Orders as hereinafter more fully appears.

17. This Motion is supported by the accompanying Exhibits and the points and authorities stated herein.

Standard of Review

18. The Committee Notes to the 1993 rule state that the abuse of discretion standard adopted by the Supreme Court in Cooter & Gell should continue to be applied to Rule 11 cases on appeal. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990) (establishing abuse of discretion as the standard to govern appellate court review of District Court decisions under Rule 11)

Jurisdiction

19. This Court retains jurisdiction to impose sanctions, even after its remand of this case to state court. See Cooter & Gell v. Hartmax Corp., 496 U.S. 384, 396 (1990) (holding that a district court retains jurisdiction to impose Rule 11 sanctions even after a case has been voluntarily dismissed); see also Desert Sch. Fed. Credit Union v. Johnson, 473 Fed. App'x 804 (9th Cir. 2012) (holding that court "ha[s] jurisdiction to impose Rule 11 sanctions . . . even after

remanding the case to state court"); Bryant v. Britt, 420 F.3d 161, 164 (2d Cir. 2005) (district court is not deprived of jurisdiction to resolve the collateral issue of Rule 11 sanctions by virtue of an earlier order remanding the suit to state court); Unanue-Casal v. Unanue-Casal, 898 F.2d 839, 841 (1st Cir. 1990) (after dismissal of the removal petition, federal court retained jurisdiction to impose Rule 11 sanctions); Sibley v. Lincoln, Civ. A. No. C-07-258, 2007 WL 2176979, at *3 (S.D. Tex. July 27, 2007) (after remand, federal court retained jurisdiction to consider imposing sanctions on a removing party who allegedly misrepresented his citizenship to manufacture diversity) (citing cases).

20. As the Supreme Court explained in Cooter, the imposition of Rule 11 sanctions "requires the determination of a collateral issue" and "may be made after the principal suit has been terminated." Cooter, 496 U.S. at 396; see also Rector v. Approved Fed. Sav. Bank, 265 F.3d 248 (4th Cir. 2001) (affirming the grant of a motion for sanctions served and filed ten days after the district court had dismissed all claims).

21. In addition to the authority under Rule 11, this Court has "the inherent power" to impose sanctions. Chambers v. NASCO, Inc., 501 U.S. 32, 41, 47, 46-49 (1991) (sanctions imposed under the inherent power for filing false and frivolous pleadings, as well as for bad faith conduct occurring "outside the confines of th[e] Court"); see also United States v. Shaffer Equipment Co., 11 F.3d 450, 458, 461-62 (4th Cir. 1993) (holding that the inherent power "is organic, without need of a statute or rule for its definition" and includes the power to "assess attorney's fees").

22. This honorable Court specifically retained jurisdiction over compliance with its injunction and other orders throughout the controversy, as reflected in the remand Order on file with the state Probate Court.

Ground for Motion

23. Plaintiff Curtis is informed and believes, and therefore avers that Defendants are in violation of Rule 11(b) for willfully violating this Court's Injunction and other Orders.

Specifically, this Court's Injunction:

24. The injunction enjoins Defendants from spending trust funds or liquidating trust assets without express court approval and commands Defendants to deposit income into an appropriate account for the beneficiary.

The Order: (Emphasis added)

> *The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.*
>
> *In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. **However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account**. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.*

Specifically, this Court Ordered:

25. Information relating to trust business is the property of all of the beneficiaries and not just Anita and Amy Brunsting[6].

[6] Transcript of April 9, 2013 page 37.

26. This Court further ruled that the trust is not liable to pay the personal legal liabilities of the Defendants and that any attorney fees paid from the trust would have to be paid equally by mutual agreement of all of the beneficiaries. (Exhibit 4)[7]

Information Disclosures

27. Defendants, Anita and Amy Brunsting, were personally present April 9, 2013[8] when this Court entered the following Orders.

> *THE COURT: So, the point I'm getting to here is under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.*
>
> *MR. VIE: Yes, Your Honor.*
>
> *THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.*
>
> *MR. VIE: I understand that.*

28. The remand order was accepted by the state Probate Court on May 15, 2014, without qualification or reservation.

Defendants' Contrary Conduct in the State Court

29. Upon securing remand to state Court, the Mills Shirley attorneys moved to amend the federal injunction and after a non-productive mediation moved for leave to withdraw as counsel of record for Defendants.

30. Anita Brunsting then retained Bradley Featherston and Amy Brunsting retained Neal Spielman, and each resumed the same baseless positions disposed of by this Court at the

[7] April 9, 2013 Transcript page 46 line 10 through page 47 line 2
[8] Transcript of April 9, 2013 page 2 lines 15-16

injunction hearing and also assumed positions not included in the Defendants' affirmative defenses in the federal Court.

Unexplained Changes in Trust Assets

31. There have been no evidentiary hearings or rulings in the state Court that would affect this Court's April 9, 2013 Order for the disclosure of information to Plaintiff.

32. On June 15, 2015 Plaintiff sent yet another 90 day demand for statutory accounting. (Exhibit 5)

33. On June 25, 2015 Plaintiff received supplemental production from Anita Brunsting titled 2015-06-25 Anita Sup 5671-5813 (143 pages).

34. Anita's supplemental production included copies of bank and brokerage statements for March 2015 and May 2015, tax payment vouchers and check copies, supporting tax documents for 2014 and the July 1, 2008 Appointment of Successor Trustees.

35. A comparison of account numbers for the statements provided, versus the account numbers from the 1099's in the supporting tax documents for 2014, show four (4) accounts for which statements were not provided in this production.

36. A review of the Master's Report[9] reveals a substantial decrease in dividend income in the Fourth Quarter of 2013, for one or more of these accounts. This would seem to indicate a substantial decrease in the value of the principal in these accounts during that period of time.

37. There were no reported trust business activities or expenses during that period that explain any expenditure, nor were statements ever provided for that period.

[9] Case 4:12-cv-00592 Document 62 filed in TXSD on 8/08/13

Defendants are Refusing to Disclose Bank and Brokerage Statements

38. Plaintiff filed the Curtis v Brunsting lawsuit because Defendants, Anita and Amy Brunsting, while claiming to be trustees, refused to disclose information, answer inquiries or properly account for assets.

39. It was discovered by a compelled response that Defendants had violated trust provisions designed to preserve and protect trust principal by improperly invading principal and distributing assets unequally in their own favor. It was also discovered that they had failed to establish and maintain accurate books and records of accounts.[10]

40. Plaintiff has not received a proper statutory accounting as per her June 15, 2015 demand.

41. Defendants, Anita and Amy Brunsting, are again withholding bank and brokerage statements claiming Plaintiffs are not entitled to information because they violated the no contest clause in the imaginary 8/25/2010 QBD, by bringing litigation, and "may no longer be beneficiaries".[11]

42. Defendants, Anita and Amy Brunsting, are believed to be withholding bank and brokerage statements in effort to conceal violations of the federal injunction, as there can be no legitimate reason for their continued concealment of trust asset related information.[12]

43. Defendants also assume the position that Plaintiff must pay for fiduciary disclosures prior to receiving any trust information, in direct violation of this Court's orders. Amy Brunsting's opening remarks in her June 24, 2015 answer to Plaintiff Curtis' interrogatories and requests for disclosures and production: (Exhibit 6)

[10] See report of Special Master, Document 45 in this Court's record.
[11] See Exhibit 6
[12] Transcript of March 9, 2016 Pages 15-end

> *Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.*
>
> *To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:*

Defendants Pugnaciously Refuse to Obey the Federal Injunction

44. Defendants claim that personal asset trusts have not been funded because of the lawsuits brought by Carl and Candace and because of the Injunction:[13]

> *The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.*

45. This is obviously a violation of the federal Injunction and a direct contradiction with the Affidavit filed into this Court under penalty of perjury by Defendant Amy Brunsting on March 6, 2012. (Exhibit 1) At item 5 of that Affidavit Amy claimed: (emphasis added)

> *As Co-Trustees, my sister and I have determined that it is impractical to give **each of the five heirs**, or **the trusts set up for their benefit (as is the case for Candace)**, an undivided share of a house in Houston.*

46. Defendants' refuse to deposit income into an appropriate account for the beneficiary and are in knowing and deliberate contempt of this Court's injunctive orders and all conditions precedent to the remand agreement.

[13] Amy Brunsting's June 24, 2015 answer to Plaintiff Curtis interrogatory No. 1

47. On March 30, 2015 Plaintiff inquired of defendants via email seeking disclosures regarding these four accounts and has received no responsive documents to date. (Exhibit 7)

Plaintiff Seeks Sanctions Sufficient to Penalize Defendants and their Counsel and Preserve the Integrity of the Proceedings Before This Honorable Court

48. Conduct by Defendants and their counsel in state Court, in wonton and willful disregard for this Court's Orders, warrants a wide range of sanctions, including monetary and non-monetary penalties including the relief provided by Rule 60(b), referral to the state bar, and whatever other equitable relief the Court deems appropriate to redress the prejudice Plaintiff has suffered as a result of these ethical violations. *See* Fed. R. Civ. P. 11 Advisory Committee's Note ("The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper."); *see also Chambers*, 501 U.S. at 44-45 (discussing court's discretion to impose sanctions pursuant to its inherent power, and reasoning that "[a] primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process").

49. Rule 11 expressly provides for monetary sanctions, including "an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation" and "an order to pay a penalty into court." Fed. R. Civ. P. 11(c)(4).

50. Sanctions are necessary and appropriate to redress the prejudice suffered by Plaintiff, to deter similar abuses by these defendants and their counsel in the future, in the interests of the public policy of upholding the dignity and authority of this Honorable Court and in the interests of justice.

Conclusion

51. Defendants have clearly expressed their disrespect for the federal injunction and the Orders entered by this Court in their state court pleadings and no other evidence is required for this Court to act to enforce its dignity and authority.

52. For the foregoing reasons, Plaintiff respectfully requests that the Court impose sanctions on Defendants and their counsel for the improper conduct, under Federal Rule of Civil Procedure 11 or pursuant to its own inherent authority.

53. In accordance with Fed. R. Civ. P. 11(c), this Motion is made separately from any other motion and is being served on Defendants' counsel on April 16, 2016.

54. If Counsel fails to take adequate curative measures within 21 days of service, Plaintiff will file this Motion with the Court.

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

CERTIFICATE OF SERVICE

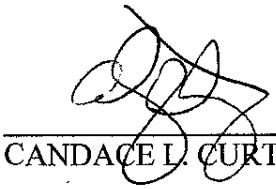
I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 16 day of April 2016, to the following via email and Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com



CANDACE L. CURTIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 2ND day of July 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
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nspielman@grifmatlaw.com

CANDACE L. CURTIS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 1st day of August 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
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Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
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1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

CANDACE L. CURTIS

EXHIBITS

EXHIBIT 1 – Amy Brunsting Affidavit……..……E1-E3

EXHIBIT 2 – Memorandum and Order Preliminary Injunction……....E4-E8

EXHIBIT 3 – Order Granting Plaintiff's Motion to Remand……,……..…E9-E10

EXHIBIT 4 – April 9, 2013 Transcript……..……E11-E64

EXHIBIT 5 – June 15, 2015 E-Mail Demand for Accounting……..…E65-E66

EXHIBIT 6 – Amy Brunsting's Responses to Curtis' Interrogatories……..…E67-E95

EXHIBIT 7 – March 30, 2016 E-Mail Request for Information……...E96-E97

EXHIBIT 8 – April 16, 2016 Rule 11 Notice Letter……..E98-E99

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

CANDACE LOUISE CURTIS	§	
	§	
	§	CIVIL ACTION NO. H-12-CV-592
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING, and	§	
AMY RUTH BRUNSTING	§	
	§	
	§	

AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting

AMY RUTH BRUNSTING

Amy Ruth Brunsting

Sworn to and signed before me by 6th, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	Ä	
	Ä	
Plaintiff,	Ä	
VS.	Ä	CIVIL ACTION NO. 4:12-CV-592
	Ä	
ANITA KAY BRUNSTING, *et al*,	Ä	
	Ä	
Defendants.	Ä	

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiffôs, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendantsô, Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiffôs renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiffôs motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust (ñthe Trustò). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

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recovery of legal fees and damages. The Court denied the plaintiffôs request for a temporary restraining order and for injunctive relief. However, concurrent with the Courtôs order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendantsô argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiffôs case.

The plaintiff gave notice and appealed the Courtôs dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Courtôs dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiffôs renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to ñprovide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting.ò According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiffôs request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Courtôs power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

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PROBATE COURT 4

412249

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Nelva Brunsting, Deceased

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

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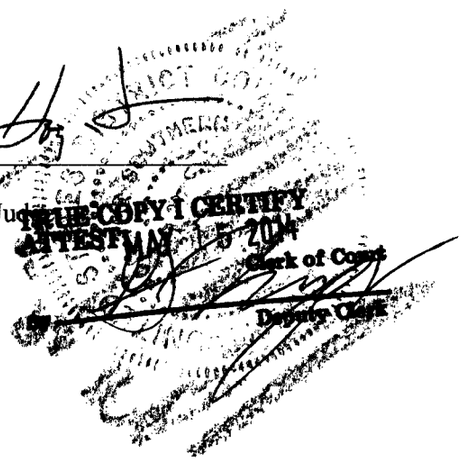
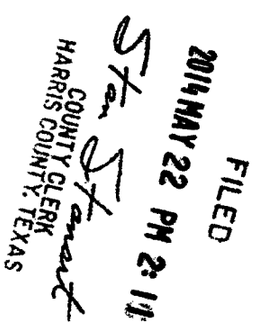
It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge





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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	*	Civil No. H-12-592
	*	
VERSUS	*	Houston, Texas
	*	April 9, 2013
ANITA KAY BRUNSTING, et al	*	9:50 a.m.

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.

17-20360.1674

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

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or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

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THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

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Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

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control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

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phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

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THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

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so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

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disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

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Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

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THE COURT: F-a-r-m, farm?
MS. CURTIS: Yes, family farm in Iowa.
THE COURT: That was sold?
MS. CURTIS: No, it was not.
THE COURT: What's on the farm that's increasing these prices? What are they harvesting?
MS. CURTIS: Corn and soybean.
THE COURT: Is that for profit or just simply --
MS. CURTIS: To my understanding we have a lease with the farmer.
THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.
MS. CURTIS: Yes.
THE COURT: Those assets or that money goes into the estate?
MS. CURTIS: I believe so.
THE COURT: And that accounts for some of the increase, as you understand them?
MS. CURTIS: Yes.
THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?
MS. CURTIS: Yes, Your Honor.

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THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

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of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

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did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

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trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

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one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

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THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

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MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

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THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

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mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

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voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

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entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

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while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

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But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

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MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

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and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

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under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

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She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

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tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

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interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

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MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____

Fred Warner, CSR
Official Court Reporter

17-20360.1727

MIME-Version: 1.0
Content-Type: multipart/mixed; boundary="----=_Part_483675_1625879494.1443134736376"

On Monday, June 15, 2015 3:40 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Anita and Amy have a fiduciary **obligation** to provide **ALL** of the beneficiaries with the same information regarding trust income and expenses, on a regular basis. **IT IS THEIR DUTY TO ACCOUNT,** and to keep us advised of our beneficial interests, yet they have failed to properly do so for more than 4 and a half years.

Judge Butts' September 4, 2014 order states that the trustees:

"- provide all parties with notice of their intent to pay all federal income taxes... within five business days of the receipt of the amount of taxes due along with all documentation received from the accountant of the amount of such taxes and provide all parties with copies of all tax returns to be filed... and all invoices form the accountant related to the preparation of federal and state income tax returns...; and provide all parties with copies of the checks paid within five business days of the date of payment and a copy of all executed documents filed with the checks;"

Your flagrant disrespect of the federal injunction, calling it questionable, and Anita's willful violation of the injunction is contemptible, to say the least.

None of the criteria of Judge Butts' order has been met.

Please provide the backup for the 2014 Decedent's Trust Form 1041. Line 14 - Attorney, accountant, and return preparer fees, in the amount of $16,831, needs to be supported in more detail, as does the capital gain on line 4.

Please send copies of all bank and brokerage statements for 2014. It is possible these were forwarded earlier to prior counsel, but I don't have them.

The payment to Kroese & Kroese P.C. for the "farm lease" (BRUNSTING005519) was unauthorized and a violation of the injunction.

Amy and Anita's failure to negotiate the EE Bonds before they reached the point where they "may not be reissued or replaced" cannot be excused. The assertion that they did not know about them, when they themselves disclosed their existence in their April 9, 2013 CD, simply won't cut it. On August 13, 2013, in response to their objection to the Report of Master, at item 4, I identify the missing EE Bonds as known assets of the trust that the trustees did not account for. On September 3, 2013, at a hearing on the Report of Master, during Mr. West's testimony, he mentioned his curiosity as to the whereabouts of said bonds. A check with the Treasury Department website revealed how easy it is to have the bonds replaced or reissued when they have been lost, or stolen (as the case may be). One need only submit the documentation as listed on the attached letter I received from the Treasury Department, dated October 8, 2014. I do not possess this documentation, the trustees are supposed to have these instruments.

This failure equates to approximately $6,500.00 in lost value of the trust assets. Whether it is irresponsible, reckless, careless, negligent, or intentional, is inconsequential in the face of the blatant refusal of the trustees to properly protect and account for these assets. It is not even a little amusing that three years after Anita allegedly became trustee, that she should claim

ignorance as to the trusts' ownership interest in those bonds or that after more than 2 years of attempting to get them to account for the bonds it is apparently the plaintiff's fault for not consenting to the trustees' cashing of bonds not even in their possession.

This electronic communication shall stand as a demand for a full, true, and complete accounting, certified as such, in conformance with the Texas Property Code and the common law.

It is also my final informal demand for the fiduciary disclosure, which the trustees full well know is the property of all five beneficiaries, and I do not have to pay them anything to meet their fiduciary obligations. Let's start with the July 1, 2008 appointment that you assert has already been disclosed.

Candace L. Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

Attachments:

10082014 EE Bond Treasury Response Letter to candy.pdf 4.4 MB

GRIFFIN & MATTHEWS

Attorneys at Law
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FACSIMILE TRANSMISSION

To:	Bobbie Bayless Darlene Payne Smith Bradley Featherston	**Fax:**	713.522.2218 713.658.1921 281.759.3214	**Phone:**	713.522.2224 713.752.8640 281.759.3213
From:	Neal E. Spielman	**Pages:**	29 including this cover page	**Date:**	6/24/2015
Re:	Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas				

PLEASE DELIVER AS SOON AS POSSIBLE

- Amy Brunsting's Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production (with Verification)

THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION WHICH IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE AND MAY CONTAIN INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone.

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June 24, 2015

Ms. Candace Louise Curtis
218 Landana Street
American Canyon, California 94503

Via C.M.R.R.R.
7014 0150 0001 5384 0078

RE: Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas

Dear Ms. Curtis:

In accordance with the Texas Rules of Civil Procedure, enclosed please find my client's Objections, Answers and Responses to the written interrogatories and requests for production recently issued. My client's verification is also enclosed.

Very truly yours,

Griffin & Matthews

By: _____
Neal E. Spielman

NES:mf
Enclosures
cc: Ms. Bobbie G. Bayless
Bayless & Stokes
Via Facsimile: 713.522.2218

Ms. Darlene Payne Smith
Crain, Caton & James
Via Facsimile: 713.425.7945

Mr. Bradley E. Featherston
The Mendel Law Firm, L.P.
Via Facsimile: 281.759.3214

NO. 412,249-401

CARL HENRY BRUNSTING, et. al.	§	IN PROBATE COURT
	§	
v.	§	NUMBER FOUR (4) OF
	§	
ANITA KAY BRUNSTING, et. al.	§	HARRIS COUNTY, TEXAS

AMY RUTH BRUNSTING'S
OBJECTIONS, ANSWERS AND RESPONSES TO CANDACE LOUISE CURTIS'S
WRITTEN INTERROGATORIES AND REQUESTS FOR PRODUCTION

TO: Candace Louise Curtis, Pro Se, – 218 Landana Street, American Canyon, California 94503

Amy Ruth Brunsting, serves these Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production in accordance with the Texas Rules of Civil Procedure.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

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Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

ATTORNEYS FOR DEFENDANT, AMY RUTH BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 24th day of June 2015, to the following in the manner set forth below:

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
218 Landana Street
American Canyon, California 94503
Via C.M.R.R.R. 7014 0150 0001 5384 0078

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
Via Facsimile: 713.522.2218

Attorneys for Carole Ann Brunsting:

Darlene Payne Smith
Alec B. Covey
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Via Facsimile: 713.425.7945

Attorneys for Anita Kay Brunsting:

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The Mendel Law Firm, L.P.
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Houston, Texas 77079
Via Facsimile: 281.759.3214

NEAL E. SPIELMAN

OBJECTIONS, ANSWERS & RESPONSES

Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.

To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:

Interrogatory No. 1 *(Really, Interrogatories 1-4)*

(a) Regarding the Affidavit in Support of Removal of Lis Pendens, Sworn to and signed by you on March 6, 2012, at Item 5 you state:

> *"As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston."*

With respect to this statement:

i. Has a Personal Asset Trust been set up for?

1. **Candace Louise Curtis**
2. **Carole Ann Brunsting**
3. **Carl Henry Brunsting**
4. **Amy Ruth Brunsting**
5. **Anita Kay Brunsting**

If the answer to any of 1 - 5 is yes, please state when and how each personal asset trust was "set up", how and from what assets each was funded. Please explain also the dispositive provisions for the personal asset trusts and the instruments from which each article was derived. Please also explain what administrative provisions were used to "set up" the personal asset trusts and identify the instrument(s) from which those provisions were derived.

If the answer to any of 1 - 5 is no, please explain the process for the creation of the personal asset trust(s) and itemize, with a particularity, the causes for your failure to establish said trust(s).

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

(b) At item 10 you state:

"The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the Lis Pendens so the sale can be consummated, for the benefit of all of the heirs".

The house sold more than 3 years ago, what benefit has any heir received from the sale of the house?

Answer:

Objection. Respondent objects to this Request as phrased. It is vague, confusing, premature, misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The proceeds from the sale of the house have been deposited in an interest-bearing account where they will remain pending resolution of the various legal proceedings initiated by Carl and Candace

(c) At item 3 in your Affidavit in Support of Removal of Lis Pendens, dated March 6, 2012, you state:

"The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance."

With respect to this statement:

Our father died April 1, 2009. At the time of his death the named successor co-trustees, as per the 2007 Amendment, were Carl and Candace. "Our parents" removed your name as successor co-trustee with the 2007 Amendment, and my name remained as a successor co-trustee with Carl. What instruments created between the 2007 Amendment and our father's death indicate: "our parents did not feel she was competent to handle her own inheritance"?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

All of them. Taken in their totality, the documents evidence our parents changing attitudes and confidence in Candace and Carl's respective abilities to properly care for themselves, manage money, make reasonable decisions, avoid negative influences in the form of spouses and/or significant others, etc.

Interrogatory No. 2 *(Really, Interrogatories 5-8)*

In your Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, you state:

> *"AMY RUTH BRUNSTING F/F/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property."*

Section 3(A)(A) at page 5 of the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment" states:

> *A. Establishment of the Personal Asset Trust:*
>
> *A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified to be made to said beneficiary's Personal Asset Trust first occurs.*

Pursuant to Article X Section "A" of the family trust, distributions were specified to be made to the five personal asset trusts at the death of the Surviving Founder.

> *Section A. Our Beneficiaries*
>
> *Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:*

That event occurred on November 11, 2011.

(a) **What clause in what trust instrument allows the trustees to ignore the dispositive provisions of Article X (compelling establishment of personal asset trusts) and to continue acting as trustees for the Survivor's and Decedent's trusts well beyond the period of time necessary to settle those trusts?**

Answer:

Objection. Respondent objects to this Request as phrased. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Further, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

(b) **Did the trustees ever have any intention of funding individual asset trusts? If yes, when, for whom, in what proportions, and based upon what criteria?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(c) Did the trustees ever intend to render full, true, and complete accounts? If yes, why have proper accounts not been rendered?

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons. Additionally, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(d) Which of the ten purposes for establishing personal asset trusts, expressed in the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", were considered in the decision not to express and fund personal asset trusts?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The document speaks for itself relative to the Trustor's intent. This notwithstanding, the Personal Asset Trusts have not been established as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and

when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

Interrogatory No. 3 *(Really, Interrogatories 9-10)*

You communicated with Frost Bank by email on January 24, 2012 "about the management of the trust accounts for my brother Carl and my sister Candy". Your email states "A copy of the trust is attached". The only attachment was the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement".

(a) **Is it your opinion that the 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" constitutes the complete trust agreement from which the personal asset trusts are to be created?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is confusing, misleading and capable of causing jury confusion. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

(b) **What was the reason why Frost Bank declined the management of the trust accounts for Carl and Candy?**

Answer:

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is vague, confusing, misleading and capable of causing jury confusion. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

My understanding is that Frost Bank declined as a result of real property being located outside the State of Texas. Whether there were other or different reasons, I cannot say.

Interrogatory No.4 *(Really, Interrogatories 11-15)*

In 2011, you, Ann, and Jack each received distributions in the form of Exxon and Chevron securities.

(a) **Were you involved in the decision to distribute those assets? If yes, what trust distribution standard was utilized and what facts were considered in relation to those standards as that criteria relates to each of the five Brunsting beneficiaries?**

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Exxon and Chevron securities were received while my mother was still alive. They were presented as gifts. I was not involved in mother's decision.

(b) Were you aware that those distributions were not equal?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Yes, I was aware that the gift I received was not the same amount as the gifts received by Ann and Jack. However, to my knowledge, the amounts received by Ann and Jack were equal in amount to similar gifts received by mother's other grandchildren

(c) Were you aware that Carl received no stock or other assets of any kind at that time?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe this is a true statement. I believe, at or around this time, Carl was receiving monies from mother directly and/or via mother's payment of bills, invoices or other expenses.

(d) Were you involved in the decision making process in labeling those distributions as gifts?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe that any monies, securities, etc. given out by mother while she was alive were distributions; but, no, I was not involved in any "decision" of this sort.

(e) Was any specific trust property directed to be distributed by the 8/25/2010 exercise of the Article III Qualified Beneficiary Designation? If yes; what was the specific property, to who

was the specific property directed to be distributed, when, in what proportions and according to what criteria?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I was not a co-trustee until after mother died in November 2011, so I was not involved in anything that occurred up until that time, and Candace's lawsuit began approximately 3 months later. As to specific trust property and its distribution, the documents speak for themselves.

Interrogatory No. 5 *(Really, Interrogatories 16-26)*

As co-trustee, regarding the exercise of "Sole and Absolute Discretion" in recent opposition to a distribution to Candace Curtis:

(a) What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(b) What is the trustee's process for making discretionary distribution decisions?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or

obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(c) What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(d) Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, identify the controlling provisions and the instrument(s) that contain those provisions.

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(e) Does the trustee work with distribution advisors? If so, who and when? If not, why not?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> My ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(f) What types of distributions would the trustees like a beneficiary to receive?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

(g) For what purposes can the beneficiary request a distribution from the trust?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

(h) When would the trustees like distributions to be made and in what priority?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

(i) What circumstances should or should not exist prior to a distribution from "the trust"?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

(j) Who should be involved in the decision making process?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?

Answer:

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

Respondent invokes all rights and remedies associated with instances of offensive discovery abuse, including without limitation, a request for a protective order. This request is occasioned, in part, by Candace Louise Curtis' abuse of the Texas Rules of Civil Procedure and her violation of "discrete sub-part" standards and restrictions. Candace Louise Curtis has issued more interrogatories than she is permitted to issue under the Rules. Until her interrogatories are re-drafted to remedy the violation, or pending further instructions from the Court, additional objections to the remaining interrogatories are reserved, as are additional factual answers.

(l) What facts were relied upon in your determination to oppose distributions to Candace?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 6 *(Really, Interrogatories 27-29)*

On March 8, 2011, Anita sent an email to you, Candy, and Carole in which she said:

> *"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care."*

(a) Did you meet with Candace Freed to discuss any trust business prior to the death of Nelva Brunsting? If yes, provide the dates and explain the purposes for each of those meetings.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) How much were you involved with Anita's efforts to convince Nelva to alter the terms of the trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) How much was Carole involved with Anita's efforts to convince Nelva to alter the terms of the trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No.7 *(Really, Interrogatories 30-31)*

Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) Were you involved in discussions involving the creation or signing of the August 25, 2010 trust amendment instrument(s)? If yes, explain the circumstances leading up to the creation of the instrument.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 8 *(Really, Interrogatories 32-33)*

Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the December 21, 2010 instruments.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 9 *(Really, Interrogatories 34-37)*

Pursuant to the Provisions of the 2005 Restatement, Administration of the Decedent's trust in Article IX:

(a) Did Nelva have the authority to remove the trustees of the Decedent's Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Did the exercise of the Qualified Beneficiary Designation and Testamentary Power of Appointment, dated 8/25/2010, appoint specific property to any specified beneficiary or beneficiaries?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) Did the Limited Testamentary Power of Appointment, dated 812512010, direct distributions of principal of the Decedent's Trust in a manner that discharged the surviving Founder's legal obligations to any beneficiary of the Decedent's Trust? If yes, please explain with a specificity as it affects each of the five Brunsting heirs/beneficiaries.

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) If Nelva discharged her legal obligations to a beneficiary of the Decedent's Trust, what beneficiary(s) and to what extent did Nelva discharge her legal obligations to those beneficiaries?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 10 *(Really, Interrogatories 38-41)*

Please refer to George Vie's July 15, 2013 letter to the Special Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, also including the $100,000.00 distribution Anita received in 2005 to pay off her house.

Your letter states that:

> *"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their m id-3 Os); and Carl's*

daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses."

Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Anita and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) **Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of intended influence addressed to the Special Master.**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules. If none say none.**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

In general the July 15, 2013 letter to the Master attempts to provide explanation for the accelerated dissipation of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity.

(c) **Were you involved in the decision making process for any of those distributions? If yes, explain.**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?**

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 11 *(Really, Interrogatories 42-56)*

Regarding the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement"

(a) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What changes to the administrative provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(e) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(f) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(g) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(h) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(i) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(j) What changes to the administrative provisions of the Survivor's Trust (Article VIII) were affected by the 8/25/2010 exercise of the Article VIII LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(k) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(l) Has the Brunsting Family Trust ever been amended or revoked by a court of competent jurisdiction?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(m) Has the Elmer H. Brunsting Irrevocable Decedent's trust ever been amended or revoked by a court of competent jurisdiction?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(n) Was any specific trust property directed to be distributed by the 8125/2010 exercise of the Article VIII Limited Testamentary Power of Appointment? If yes, what was the specific property; to who was the specific property directed to be distributed; when, in what proportions; and, according to what criteria?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(o) What specific trust property was directed to be distributed by the 8/25/2010 exercise of the Article IX limited testamentary power? According to what standard was it to be distributed, when, how and to whom was it to be distributed?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 12 *(Really, Interrogatories 57-65)*

With respect to the August 25, 2010 QBD "Section B. Trustor's Intent in Establishing Personal Asset Trusts,"

Intention 1. To protect and conserve trust principal

EE Bonds have long been known to exist, yet have never been included in the list of assets of the trust, or accounted for by the trustees. This was brought to your attention at the hearing in connection with the Report of Master in July 2013. Anita received a letter from the Treasury dated December 4, 2014, referring to "your recent transaction and/or inquiry", which says the search "identified the unredeemed bonds described on the enclosed list". It goes on to state "The Department of the Treasury requires the properly completed forms be submitted in order to process the claims." A check with the Treasury Department gave a total value of the bonds as approximately $6,452.64. A statement at the end of the Bond List received as an attachment to the correspondence says: "***If there are any bonds marked with an asterisk, they are within one month of their final maturity and may not be reissued or replaced.**" All bonds on the list are marked with an asterisk.

(a) Why was your inquiry made more than one year after you were noticed of the existence of those EE Bonds?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What claim(s), if any, were requested to be processed?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) Were the properly completed forms subsequently submitted? If no, why not? If yes, what were the results and why have the transaction records not been disclosed to Plaintiff(s)?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary

The Decedent's Trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year.

(a) Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you obtained or been given regarding income taxes paid by the trusts, if any?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

(a) In what way have you respected this intention?
Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Answer:

Intention 5 To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

(a) In what way have you considered the needs and resources of beneficiary Candace Curtis in your distribution considerations?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What facts did you rely upon in evaluating the needs and personal resources of beneficiary Candace Curtis in your distribution considerations?

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

(a) What inquiry did you make in effort to determine the existence of business ventures or start-ups that beneficiary Candace Curtis may be involved in as a part of your distribution considerations?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) In your determination not to fund individual asset trusts what facts were considered in relation to any of the remaining expressed intentions for such actions?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 13 *(Really, Interrogatories 66-69)*

The Bates stamped documents included in Plaintiffs document production P6-P155,"My Trustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

(a) Which of the eight "Do's" have you done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) Which of the eight "Do's" have you not done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) Which of the nine "Do Not's" have you done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) Which of the nine "Do Not's" have you not done?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 14 *(Really, Interrogatories 70-75)*

In establishing Personal Asset Trusts for the beneficiaries

(a) Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) What dispositive and administrative provisions flow to the personal asset trusts from the Decedent's Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) What dispositive and administrative provisions flow to the personal asset trusts from the Survivor's Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) When the dispositive provisions of the Decedent's Trust and those of the amended Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(e) When the administrative provisions of the Decedent's Trust and those of the Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(f) Describe the steps you have taken to honor the provisions of Article X, Section B (l)(a)(i) of the Brunsting Family Trust?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Interrogatory No. 15 *(Really, Interrogatories 76-77)*

Accounts and Accounting

(a) How can you create personal asset trusts and fulfill the purposes of the trust without a full, true, and complete statutory accounting?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) When and how did the acting trustees inform the beneficiaries regarding their beneficial interests?

Answer:

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

OBJECTIONS AND RESPONSES

Request for Production No. 1

Schedule F - Purports to be a partial gifting reconciliation from Elmer and Nelva Brunsting from 2001, as developed from checking transactions. Please provide any bank statements beginning January 1, 2001 through the present that have not already been provided.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 2

Please provide any Edward Jones statements beginning January 1, 2001 through the present that have not already been provided.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 3

Please provide a true and correct copy of the "Appointment of Successor Trustees" dated July 1, 2008 referenced in such instruments as the Certificates of Trust bearing Bates Stamps P6783, V&F 000004; P6784, V&F 000005 and P6785, V &F 000006.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 4

Please provide a true and correct copy of the "Agreement" signed by Nelva Brunsting establishing the rate of trustee compensation claimed in the April 2012 spreadsheets and July 2013 Master's report. Please also include a copy of any letters of notice of change in trustee compensation, along with proofs of certified mailing to beneficiaries, as required by the Texas property statutes.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 5

Please provide any and all parole evidence indicating Nelva's knowledge of and direct participation in discussions related to "changes to the trust" specifically in regard to the instruments dated August 25, 2010, and those dated December 21, 2010.

Response:

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request. Further, it seeks information, which – if it exists – is in the hands of third parties over whom Respondent has no control.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

Request for Production No. 6

Please provide copies of all supporting documentation upon which 2014 taxes were calculated and paid in regard to any Brunsting related trust(s).

Response:

Materials responsive to this Request have previously been provided by Anita Brunsting directly and/or through counsel. Additional responsive materials are in the process of being accumulated and will likewise be provided by Anita Brunsting directly and/or through counsel.

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned notary, on this day personally appeared AMY RUTH BRUNSTING, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

My name is Amy Ruth Brunsting, and I am over 18 years of age, of sound mind and capable of making this verification. I have read answers to the interrogatories issued to me by Candace Louise Curtis. Unless otherwise noted in the content of the answers, the facts stated are within my personal knowledge and are true and correct.

Amy Brunsting
Printed Name: Amy Brunsting
Date: 6-19-15

Sworn to and subscribed before me by Amy Brunsting on the 19 day of June, 2015.

KIMBERLY A JOHNESE
Notary Public, State of Texas
My Commission Expires
NOVEMBER 16, 2016

Kimberly A Johnese
Notary Public in and for the State of Texas

Subject: Fw: Mediation Preparation
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 6/17/2016 11:27 AM
To: Rik Munson <blowintough@att.net>

On Wednesday, March 30, 2016 8:01 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Dear Anita and Amy,

I find it hard to imagine what we will be mediating without information about the assets.

I have attached an Excel spreadsheet created using the information in the supplemental production dated June 25, 2015 (bates 5671-5813). Once you receive the March 2016 bank and brokerage statements it should be simple enough for you to fill in the blanks (highlighted in blue) and return it.

The Report of Master reflects $96,740.01 in farm rental income from October 5, 2012 through March 5, 2013. Please fill in the farm rental income detail from March 6, 2013 through March 30, 2016 on the spreadsheet.

I am particularly concerned about four (4) accounts which had dividend income in 2014, yet I have been unable to find any statements for these accounts.

The Master's Report lists dividend income for Chevron account 9415:

9/9/11	$465.04
12/9/11	487.02
3/9/12	490.82
6/11/12	549.72
9/10/12	554.60
12/10/12	4.36

It appears that the bulk of the account was liquidated between September 10 and December 10, 2012. 2014 TOTAL dividends were $21.53.

Where did that money go??????? Please provide ALL of the account statements for this account.

The remaining three 1099s for which there is no backup (that I can find) in the records are:

Chevron 9407
Chevron 7657
MetLife 6968

I did find that on 12/12/14 Metlife put $33.25 in B of A account 3523. What exactly is that for? If it is an annuity, what are the terms?

Please provide the March 2016 statements for the two Chevron accounts (9407 and 7657).

17-20360.1759

Please be sure to include everyone in this email when you return the requested data. I think you will have all of the current statements by the middle of April, so I expect the information by April 15, 2016. You should request the older statements from the custodians right away if you don't have them, as it might take awhile.

We are all entitled to the information I am asking for and I see no point in picking a mediation date before we know if there will be anything to discuss.

Sincerely,

Candy

Candace L. Curtis
218 Landana Street
American Canyon, CA 94503
925-759-9020
occurtis@sbcglobal.net

Attachments:

2016-06-25 disclosure recap.xlsx	11.4 KB

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

April 16, 2016

To Anita Brunsting and Amy Brunsting and their Counsel of Record:

Please take note that Candace Louise Curtis v Anita Brunsting and Amy Brunsting, et al. (Curtis v Brunsting) is a distinctly separate suit from the claims filed by Carl Brunsting, whether individually or on behalf of the estate of Nelva Brunsting.

Curtis v Brunsting began in the federal Court 11 months before the estate's claims were filed in the Harris County District Court January 29, 2013, and 14 months prior to the claims filed in the Harris County Probate Court April 9, 2013.

Curtis v Brunsting came to the Harris County Probate Court under a remand order obtained by defendants as part of a stipulated agreement. The remand order is on file with the Probate Court accepted without qualification or reservation. The order in pertinent part reads:

> *It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.*
>
> *SIGNED on this 15th day of May, 2014.*

Defendants and their Counsel are advised that they are in violation of the federal injunction and orders issued April 9, 2013 by The Honorable Judge Kenneth Hoyt, United States District Court Judge for the Southern District of Texas, and in violation of other specific orders issued by Judge Hoyt in the course of the federal litigation as reflected in the transcripts of the federal hearings on file with the Probate Court.

The "federal and state rules impose a duty of candor, good faith and fair dealing on attorneys representing clients in the courts and in the matter at issue this notice is required by Fed. R. Civ. P. 11(b).

Counsel is further advised that violation of a federal injunction is a very serious matter and may be treated as a mere civil contempt, but may also result in criminal sanctions under Title 18 of the United States Code, depending upon the severity of the violations.

The violations I am looking at are extremely serious and involve continued refusal to act and continued misapplications of valuable consideration in direct violation of a federal injunction not to mention the law of the Brunsting trust(s).

Counsel and their clients have willfully violated federal Court orders, including but not limited to an order for disclosures of information to Plaintiffs and all the other beneficiaries. The Court also entered an order that paying Defendants' attorney's fees is not a liability of the trust

and that attorneys can only be paid from the trust by the mutual agreement of all the beneficiaries. My consent has neither been requested, nor has it been given, nor have I received complete disclosures of the information ordered by the federal Court.

Counsel and their clients are also reminded that the remand from the federal to the state court was the product of a multi-faceted arrangement in which Defendants and their counsel agreed to honor the federal court injunction and the orders entered as if there had been no remand.

Plaintiff Curtis respectfully requests that counsel advise as to how it would remedy its multitude of ethical violations within 21 days, as provided by Rule 11(b). The rest of this message is contained in those rules.

Please see attached Rule 11(b) Motion for Sanctions with Points and Authorities.

Sincerely,

Candace L. Curtis

Southern District of Texas, Texas
515 RUSK ST HOUSTON TX 77002

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff
VS
CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY LESTER; ET AL
Defendant

AFFIDAVIT OF SERVICE

I, **KIMBERLY BARTHOLOMEW**, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 08/25/16 10:43 am, instructing for same to be delivered upon Brusting, Amy Ruth.

That I delivered to : Brusting, Amy Ruth.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES AND PRACTICES;CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 2582 County Ledge
NEW BRAUNFELS, Comal County, TX 78132

Manner of Delivery : by PERSONALLY delivering the document(s) to the person above.

Delivered on : August 30, 2016 7:52 am

My name is KIMBERLY BARTHOLOMEW, my date of birth is December 27th, 1978, and my address is 103 Vista View Trl #103, Spicewood, TX 78669 and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.
Executed in CALDWELL County, State of Texas, on the 31st day of August, 2016.

KIMBERLY BARTHOLOMEW Declarant
2118

Texas Certification#: SCH-10964 Exp. 06/30/17

Private Process Server
Professional Civil Process Of Texas, Inc
103 Vista View Trail Spicewood TX 78669
(512) 477-3500

PCP Inv#: A16803289

Reference : 4:16-CV-01969

Service Fee: 70.00
[illegible]ness Fee: .00
[illegible]sage Fee: .00

Curtis, Candace L

RETURN TO CLIENT

AX02A16803289

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Civil Action No. 4:16-cv-01969

Kunz-Freed et al.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, TX 78132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Amy Ruth Brunsting
was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____ , a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

United States District Court
Southern District of Texas
FILED
SEP 12 2016
David J. Bradley, Clerk of Court

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR., ET AL	§	

Defendant Anita Brunsting's Motion for Access to Electronic Filing

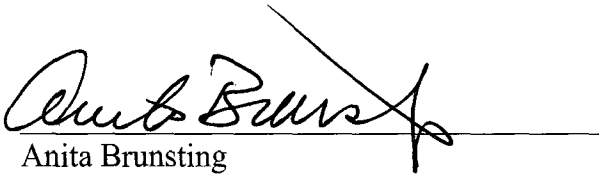
TO THE HONORABLE JUDGE OF SAID COURT:

I, Anita Brunsting, am a Pro Se defendant in the above-styled case. I am aware that non-attorneys are not approved for accounts in the Court's electronic filing system. I request that the Court waive this requirement and approve my use of a PACER account to enable me to electronically file documents in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file sucessfully:
    a. A computer with internet access.
    b. An email account on a daily basis to receive notifiications from the Court and notices from the e-filing system.
    c. A scanner to convert documents that are only in paper format into electronic files.
    d. A printer or copier to create documents.
    e. A word-processing program to create documents.

f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Respectfully submitted,



Anita Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904
Pro Se Defendant

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

1. Candace L. Curtis — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020

2. Rik Wayne Munson — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-349-8348

3. Candace Kuntz-Freed — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, Texas 77056

4. Albert Vacek, Jr. — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, Texas 77056

5. Bernard Lyle Matthews III — Defendant
   11777 Katy Freeway, Suite 300 South
   Houston, Texas 77079

6. Amy Ruth Brunsting — Defendant
   2582 Country Ledge
   New Braunfels, Texas 78132

7. Neal E. Spielman — Defendant
   Griffin & Matthews
   1155 Dairy Ashford, Suite 300
   Houston, Texas 77079

8. Bradley Featherston — Defendant
Featherston Tran PLLC
20333 State Highway 249, Suite 200
Houston, Texas 77070

9. Stephen A. Mendel — Defendant
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
281-759-3213

10. Darlene Payne Smith — Defendant
Crain, Caton & James
Five Houston Center, 17th Floor
1401 McKinney, Suite 1700
Houston, Texas 77010

11. Jason B. Ostrom — Defendant
Ostrom Morris, P.L.L.C
6363 Woodway, Suite 300
Houston, Texas 77056
713-863-8891

12. Gregory Lester — Defendant
955 N. Dairy Ashford, Suite 220
Houston, Texas 777079

13. Jill Willard Young — Defendant
MacIntyre, McCulloch, Stanfield
and Young, L.L.P.
2900 Weslayan, Suite 150
Houston, Texas 77027

14. Bobbie Bayless — Defendant
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

15. Christine Riddle Butts — Defendant
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 77002

16. Clarinda Comstock — Defendant
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 770002

17. Toni Biamonte — Defendant
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 77002

on this 9TH day of September 2016.

Anita Brunsting

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969
	§	(Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR., ET AL	§	

Order Garnating Defendant Anita Brunsting's Motion for Access to Electronic Filing

The Court considered defendant Anita Brunsting's Motion for Access to Electronic Filing. Finding that good cause exists, the motion is GRANTED.

IT IS SO ORDERED.

SIGNED on this _____ day of _____, 2016.

_____
United States District Judge

17-20360.1771

United States District Court
Southern District of Texas
FILED
SEP 12 2016
David J. Bradley, Clerk of Court

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969
	§	(Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR., ET AL	§	

Defendant Anita Brunsting's
Certificate of Interested Parties

Defendant, Anita Brunsting, files this certificate of interested parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiffs:

   A. Candace Louise Curtis
   B. Rik Munson

2. Defendants:

   A. Candace Kunz-Freed
   B. Albert Vacek, Jr.
   C. Bernard Lyle Matthews
   D. Anita Brunsting
   E. Amy Brunsting
   F. Neal Spielman
   G. Bradley Featherston
   H. Stephen A. Mendel
   I. Darlene Payne Smith
   J. Jason Ostrom
   K. Gregory Lester
   L. Jill Willard Young
   M. Bobbie Bayless
   N. Christine Riddle Butts
   O. Clarinda Comstock
   P. Toni Biamonte

Respectfully submitted,

Anita Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904
Pro Se Defendant

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

1. Candace L. Curtis — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020

2. Rik Wayne Munson — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-349-8348

3. Candace Kuntz-Freed — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, Texas 77056

4. Albert Vacek, Jr. — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, Texas 77056

5. Bernard Lyle Matthews III — Defendant
   11777 Katy Freeway, Suite 300 South
   Houston, Texas 77079

17-20360.1773

6. Amy Ruth Brunsting — Defendant
2582 Country Ledge
New Braunfels, Texas 78132

7. Neal E. Spielman — Defendant
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

8. Bradley Featherston — Defendant
Featherston Tran PLLC
20333 State Highway 249, Suite 200
Houston, Texas 77070

9. Stephen A. Mendel — Defendant
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
281-759-3213

10. Darlene Payne Smith — Defendant
Crain, Caton & James
Five Houston Center, 17th Floor
1401 McKinney, Suite 1700
Houston, Texas 77010

11. Jason B. Ostrom — Defendant
Ostrom Morris, P.L.L.C
6363 Woodway, Suite 300
Houston, Texas 77056
713-863-8891

12. Gregory Lester — Defendant
955 N. Dairy Ashford, Suite 220
Houston, Texas 777079

13. Jill Willard Young — Defendant
MacIntyre, McCulloch, Stanfield
and Young, L.L.P.
2900 Weslayan, Suite 150
Houston, Texas 77027

17-20360.1774

14. Bobbie Bayless — Defendant
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

15. Christine Riddle Butts — Defendant
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 77002

16. Clarinda Comstock — Defendant
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 770002

17. Toni Biamonte — Defendant
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 77002

on this 9TH day of September 2016.

Anita Brunsting

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

United States District Court
Southern District of Texas
FILED
SEP 16 2016
David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969
CANDACE KUNZ-FREED, ALBERT VACEK, JR., ET AL	§	

Defendant Anita Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim

Plaintiffs sued me, defendant, Anita Brunsting, along with eleven (11) attorneys, two (2) judges, and a court reporter for alleged RICO violations. The complaint should be dismissed because the plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs allege that I am involved in a racketeering enterprise in a probate case pending in Harris County Probate Court No. 4, under C.A. No. 412,249-401, *Estate of Nelva Brunsting, Deceased*. Plaintiffs refer to this alleged racketeering entity as the "Harris County Tomb Raiders, a.k.a. the Probate Mafia." Plaintiffs allege, among other things, that I engaged in illegal wiretapping, theft/extortion, forgery of internal revenue forms, wire fraud, and fraudulent transfer of securities in furtherance of a county-wide conspiracy that negatively effected the plaintiffs.

As an example of the lack of specificity of their claims as to myself or my attorneys, the plaintiffs claim that I and one of my attorneys engaged in illegal wiretapping merely because there were recordings of phone messages from the decedent's (my mother's) answering machine produced during the course of discovery and produced as required by law. In addition, their claim fails to explain how I could cause a wiretap on my mother's phone, or how my attorneys could be involved

17-20360.1776

in obtaining recordings that predate their involvement in the case.

Another example comes from plaintiffs' theft/extortion claims, which state that my attorneys and I used an "extortion instrument" to defend against plaintiff Curtis' demand for a disbursement. There are at least two problems with this allegation: (1) the alleged "extortion instrument" was created by my mother's attorney and executed before I became a trustee; and (2) there are no facts to show how, where, when, what, or why I used this alleged "extortion instrument" to harm the plaintiffs. Nor do the plaintiffs' explain the type of harm I supposedly caused.

The alleged "extortion instrument" is a qualified beneficiary trust (QBT) prepared by defendant Alfred Vacek, Jr. at the request of his client (my mother), Nelva Brunsting, years before the alleged act of extortion. Neither I, nor Mr. Mendel, nor Mr. Featherston, or anyone else associated with the Mendel Law Firm were involved in drafting the QBT. Without an explanation of how I participated in the creation of the instrument, or knew that the QBT could be used to extort the plaintiffs, there is not sufficient information in the complaint to allow me to defend against this claim. In addition, the term "extortion" generally means taking something of value by force or threats, and there are no facts to show that I took anything by force or threat.

In short, plaintiffs' claims are vague, conclusory, and based entirely on inference and speculation.

I incorporate by reference as though set forth in full herein the arguments and legal authorities found in Defendants Candace Kunz-Freed and Albert Vacek, Jr.'s Motion to Dismiss for Failure to State a Claim (Docket Entry 19, 09/07/16) and Bobbie G. Bayless' Motion to Dismiss for Failure to State a Claim (Docket Entry 23, 09/07/16), as they apply to the claims against me.

Prayer

I pray that the Court grant my motion to dismiss for plaintiffs' failure to state a claim and for such other and further relief, general and special, legal and equitable, to which I may be entitled to receive.

Respectfully submitted,

Anita Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904
Pro Se Defendant

17-20360.1778

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

1.	Candace L. Curtis 218 Landana Street American Canyon, CA 94503 925-759-9020	Plaintiff, Pro Se
2.	Rik Wayne Munson 218 Landana Street American Canyon, CA 94503 925-349-8348	Plaintiff, Pro Se
3.	Candace Kuntz-Freed c/o Cory S. Reed Thompson, Coe, Cousins & Irons, L.L.P. One Riverway, Suite 1400 Houston, Texas 77056	Defendant
4.	Albert Vacek, Jr. c/o Cory S. Reed Thompson, Coe, Cousins & Irons, L.L.P. One Riverway, Suite 1400 Houston, Texas 77056	Defendant
5.	Bernard Lyle Matthews III 11777 Katy Freeway, Suite 300 South Houston, Texas 77079	Defendant
6.	Amy Ruth Brunsting 2582 Country Ledge New Braunfels, Texas 78132	Defendant
7.	Neal E. Spielman Griffin & Matthews 1155 Dairy Ashford, Suite 300 Houston, Texas 77079	Defendant
8.	Bradley Featherston Featherston Tran PLLC 20333 State Highway 249, Suite 200 Houston, Texas 77070	Defendant

9.	Stephen A. Mendel The Mendel Law Firm, L.P. 1155 Dairy Ashford, Suite 104 Houston, Texas 77079 281-759-3213	Defendant
10.	Darlene Payne Smith Crain, Caton & James Five Houston Center, 17th Floor 1401 McKinney, Suite 1700 Houston, Texas 77010	Defendant
11.	Jason B. Ostrom Ostrom Morris, P.L.L.C 6363 Woodway, Suite 300 Houston, Texas 77056 713-863-8891	Defendant
12.	Gregory Lester 955 N. Dairy Ashford, Suite 220 Houston, Texas 777079	Defendant
13.	Jill Willard Young MacIntyre, McCulloch, Stanfield and Young, L.L.P. 2900 Weslayan, Suite 150 Houston, Texas 77027	Defendant
14.	Bobbie Bayless Bayless & Stokes 2931 Ferndale Houston, Texas 77098	Defendant
15.	Christine Riddle Butts Harris County Civil Courthouse 201 Caroline, 7TH floor Houston, Texas 77002	Defendant
16.	Clarinda Comstock Harris County Civil Courthouse 201 Caroline, 7TH floor Houston, Texas 770002	Defendant

17. Toni Biamonte
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 77002

Defendant

on this 15TH day of September 2016.

Anita Brunsting

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR., ET AL	§	

Order Granting Defendant Anita Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim

The Court considered defendant Anita Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim.

Finding that the plaintiffs' failed to state a claim for which relief may be granted, the defendant's motion is GRANTED and the plaintiffs' suit is dismissed.

SIGNED on this _____ day of _____, 2016.

_____
United States District Judge

17-20360.1782

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

United States Courts
Southern District of Texas
FILED
SEP 16 2016
David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	

Defendant Amy Brunsting's Motion for Access to Electronic Filing

TO THE HONORABLE JUDGE OF SAID COURT:

I, Amy Brunsting, am a Pro Se defendant in the above-style case. I am aware that non-attorneys are not approved for accounts in the Court's electronic filing system. I request that the Court waive this requirement and approve my use of a PACER account to enable me to electronically file documents in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
    a. A computer with internet access.
    b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.
    c. A scanner to convert documents that are only in paper format into electronic files.
    d. A printer or copier to create documents.
    e. A word-processing program to create documents.

17-20360.1783

f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Respectfully submitted,

//s// Amy Brunsting

Amy Brunsting
2582 Country Ledge Drive
New Braunfels, Texas 78132
Pro Se Defendant

17-20360.1784

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

1. Candace L. Curtis — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020

2. Rik Wayne Munson — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-349-8348

3. Candace Kunz-Freed — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, TX 77056

4. Albert Vacek, Jr. — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, TX 77056

5. Bernard Lyle Matthews III — Defendant
   11777 Katy Freeway, Suite 300 South
   Houston, TX 77079

6. Anita Kay Brunsting — Defendant
   203 Bloomingdale Circle
   Victoria, TX 77904

7. Neal E. Spielman — Defendant
   Griffin & Matthews
   1155 Dairy Ashford, Suite 300
   Houston, TX 77079

8. Bradley Featherston — Defendant
   Featherston Tran PLLC
   20333 State Highway 249, Suite 200
   Houston, TX 77070

9. Stephen A. Mendel — Defendant
The Mendel Law Firm, L. P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

10. Darlene Payne Smith — Defendant
Crain, Caton & James
Five Houston Center, 17th Floor
1401 McKinney, Suite 1700
Houston, TX 77010

11. Jason B. Ostrom — Defendant
Ostrom Morris, P. L. L. C.
6363 Woodway, Suite 300
Houston, TX 77056

12. Gregory Lester — Defendant
955 N. Dairy Ashford, Suite 220
Houston, TX 77079

13. Jill Willard Young — Defendant
MacIntyre, McCulloch, Stanfield
and Young, L. L. P.
2900 Weslayan, Suite 150
Houston, TX 77027

14. Bobbie Bayless — Defendant
Bayless & Stokes
2931 Ferndale
Houston, TX 77098

15. Christine Riddle Butts — Defendant
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

16. Clarinda Comstock — Defendant
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

17. Toni Biamonte
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

Defendant

on this 14th day of September 2016.

//s// Amy Brunsting

Amy Brunsting

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	

Order Granting Defendant Amy Brunsting's Motion for Access to Electronic Filing

The Court considered defendant Amy Brunsting's Motion for Access to Electronic Filing. Finding that good cause exists, the motion is GRANTED.

IT IS SO ORDERED,

SIGNED on this _____ day of _____, 2016.

_____
United States District Judge

17-20360.1788

United States District Court
Southern District of Texas
FILED
SEP 16 2016
David J. Bradley, Clerk of Court

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	

Defendant Amy Brunsting's
Certificate of Interested Parties

Defendant Amy Brunsting, files this certificate of interested parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiffs:

   A. Candace Louise Curtis
   B. Rik Wayne Munson

2. Defendants:

   A. Candace Kunz-Freed
   B. Albert Vacek, Jr.
   C. Bernard Lyle Matthews
   D. Anita Kay Brunsting
   E. Amy Ruth Brunsting
   F. Neal Spielman
   G. Bradley Featherston
   H. Stephen Mendel
   I. Darlene Payne Smith
   J. Jason Ostrom
   K. Gregory Lester
   L. Jill Willard Young
   M. Bobbie Bayless
   N. Christine Riddle Butts
   O. Clarinda Comstock
   P. Toni Biamonte

Respectfully submitted,

//s// Amy Brunsting

Amy Brunsting
2582 Country Ledge Drive
New Braunfels, Texas 78132
Pro Se Defendant

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

1. Candace L. Curtis
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020
   — Plaintiff, Pro Se

2. Rik Wayne Munson
   218 Landana Street
   American Canyon, CA 94503
   925-349-8348
   — Plaintiff, Pro Se

3. Candace Kunz-Freed
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, TX 77056
   — Defendant

4. Albert Vacek, Jr.
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, TX 77056
   — Defendant

5. Bernard Lyle Matthews III
   11777 Katy Freeway, Suite 300 South
   Houston, TX 77079
   — Defendant

6. Anita Kay Brunsting
   203 Bloomingdale Circle
   Victoria, TX 77904
   — Defendant

7. Neal E. Spielman — Defendant
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079

8. Bradley Featherston — Defendant
Featherston Tran PLLC
20333 State Highway 249, Suite 200
Houston, TX 77070

9. Stephen A. Mendel — Defendant
The Mendel Law Firm, L. P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

10. Darlene Payne Smith — Defendant
Crain, Caton & James
Five Houston Center, 17th Floor
1401 McKinney, Suite 1700
Houston, TX 77010

11. Jason B. Ostrom — Defendant
Ostrom Morris, P. L. L. C.
6363 Woodway, Suite 300
Houston, TX 77056

12. Gregory Lester — Defendant
955 N. Dairy Ashford, Suite 220
Houston, TX 77079

13. Jill Willard Young — Defendant
MacIntyre, McCulloch, Stanfield
and Young, L. L. P.
2900 Weslayan, Suite 150
Houston, TX 77027

14. Bobbie Bayless — Defendant
Bayless & Stokes
2931 Ferndale
Houston, TX 77098

15. Christine Riddle Butts — Defendant
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

16. Clarinda Comstock
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

Defendant

17. Toni Biamonte
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

Defendant

on this 14th day of September 2016.

//s// Amy Brunsting

Amy Brunsting

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-CV-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

Plaintiffs' Joint Answer to Defendant Albert Vacek, Jr. and Defendant Candace Kunz-Freed's Motions to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 9(b)

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I. INTRODUCTION

1. This is a private interest as well as a public interest lawsuit as the subject matter relates to the legitimate administration of justice.

2. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act (RICO) at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c).

3. On September 7, 2016, Defendants Albert Vacek, Jr. and Candace Kunz-Freed, collectively V&F, filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), (Dkt 19), and Federal Rule of Civil Procedure 12(b)(1) (Dkt 20).

4. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint. (Dkt 1)

5. Plaintiffs hereby incorporate the Addendum in response to Defendants' claim of a want of specific allegations against Vacek & Freed and the other affirmative defenses.

II. STANDARDS OF REVIEW

Federal Rule 12(b)(6)

6. When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must take the facts alleged in the complaint as true and construe them in the light most favorable to the plaintiff. *Resnick v. AvMed, Inc., 693 F.3d 1317, 1321–22 (11th Cir. 2012).* To survive Rule 12(b)(6) scrutiny, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)* (quoting *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)*). "[F]acial plausibility" exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556).

7. The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is de novo , and the Court will employ the same standard as the district court. *First Am. Title Co. v. Devaugh, 480 F.3d 438, 443 (6th Cir. 2007)*; *Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club, 419 F.3d 462, 468 (6th Cir. 2005).*

Federal Rule 12(b)(1)

8. Whether or not a court has subject matter jurisdiction over a party is a question of law reviewed de novo; thus, a decision on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction is an issue of law

reviewed de novo. *Hunter Douglas, Inc. v. Harmonic Design, Inc., 153 F.3d 1318, 1325, 47 U.S.P.Q.2d 1769, 1772 (Fed. Cir. 1998)*.

9. On a Rule 12(b)(1) Facial Attack the court evaluates whether the plaintiff "has sufficiently alleged a basis of subject matter jurisdiction" in the complaint and employs standards similar to those governing Rule 12(b)(6) review. *Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1335 (11th Cir. 2013*).

10. In contrast to a facial attack on subject matter jurisdiction, a Rule 12(b)(1) factual attack "challenge[s] the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings such as testimony and affidavits are considered." *Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990)* (internal quotation marks omitted).

11. When the attack is factual "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.* Therefore, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.*

12. The Denial of a motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction is not immediately appealable. *Data Gen. Corp. v. Cnty. of Durham, 143 N.C. App. 97, 100, 545 S.E.2d 243, 245-46 (2001).*

III. ISSUES PRESENTED

13. Plaintiffs have not adequately pled the necessary predicate acts.

14. Plaintiffs have failed to allege an unlawful act against V & F.

15. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).

16. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

17. Plaintiffs have failed to plead a cognizable RICO enterprise.

a. Plaintiffs' enterprise allegations are too vague and conclusory.

b. Plaintiffs' alleged enterprise lacks continuity.

c. Plaintiffs have failed to adequately plead a pattern of racketeering activity.

d. Plaintiffs have not adequately alleged a conspiracy claim under § 1962(d).

e. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

f. Plaintiffs' claims should be dismissed because a violation of the Hobbs act does not create a private cause of action.

g. Plaintiffs' claims should be dismissed because V & F cannot be civilly liable for aiding and abetting.

h. Plaintiffs' claims should be dismissed because Plaintiffs have not adequately pled a violation of Plaintiffs' civil rights.

i. Plaintiffs have not adequately pled a claim under § 1983.

j. Plaintiffs have not met the Nexus/joint-action test.

k. Plaintiffs have not met the public function/state coercion or encouragement tests.

l. Plaintiffs have not adequately pled a claim under § 1985.

m. Tortious interference with inheritance rights is not a recognized cause of action in Texas.

IV. CONTEXTUAL SUMMARY

18. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff

Curtis' siblings: Carl, Carole, Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al, per stirpes.

19. Plaintiff Curtis is not an heir to any estate and has no inheritance expectancy, is not party to any estate litigation and does not believe there is any estate litigation as a matter of law.

20. This RICO lawsuit is a culmination of 4 and one-half years of multi- jurisdictional litigation that began in the federal court as a simple breach of fiduciary under diversity jurisdiction[1] seeking accounting and fiduciary disclosures, went to the Fifth Circuit[2] and back to the TXSD and then to Harris County Probate (where no one has heard of it since[3]), and the controversy is now back in an honorable federal Court under federal question jurisdiction.

21. In response to Rule 12(b)(6) motions to dismiss, on September 15, 2016, Plaintiffs filed the Rule 11(b) and Rule 60 Motions previously filed in Judge Hoyt's Court,[4] as an Addendum of Memorandum (Dkt 26), supplementing the original RICO complaint in this case.

V. HISTORY OF THE CONTROVERSY

According to the record:

22. In 1996, Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for the remaindermen grandchildren and great grandchildren. (Exhibit A1 – Art. I Sec. (c) attached E1-E61)

23. The Brunstings restated their Trust in 2005 (A2 attached E62-E148) and amended the restatement in 2007 (A3 attached E149-E151).

24. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

[1] Curtis v Brunsting 4:12-cv-592 filed TXSD February 27, 2012
[2] Curtis v Brunsting 704 F.3d 406 (2013)
[3] Dkt 25 Motion to Dismiss filed by Jill Young wondering "What is Curtis v Brunsting?"
[4] Curtis v Brunsting 4:12-cv-592 filed TXSD February 27, 2012

25. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and divided its assets among an irrevocable decedent's trust and a revocable survivor's trust.

26. Nelva Brunsting passed on November 11, 2011 and a number of illicit instruments surfaced that had been drafted after Elmer Brunsting became incompetent and after he passed, that claim to have effected changes that could not have been made under the law of the trust. (Dkt 26-14)

27. The acting trustees, Anita and Amy Brunsting, refused to answer, account or provide disclosures and after two unsuccessful demand letters[5] advising Defendants Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit.

VI. HISTORY OF THE LITIGATION

28. Plaintiff Curtis filed a Petition in the United States District Court for the Southern District of Texas, Houston Division, under Diversity Jurisdiction on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting[6] and other lawful and equitable relief.

29. On March 6, 2012, Vacek & Freed staff attorney Defendant Bernard Mathews, appearing under the letterhead "Green and Mathews" filed a motion for an emergency order, accompanied by a false affidavit signed and verified by Defendant Amy Brunsting (A4 attached E152-E155), in which Mathews implied the existence of a probate exception to Plaintiff's claims, knowing full well he had filed a nearly identical claim on behalf of plaintiff Reginald Parr, not in the probate court but in the Harris County District Court, only 3 days earlier.[7]

[5] Exhibits 17 and 20 in the original federal complaint at pages 67-68, and 71-79 respectively.
[6] Case 4:12-cv-592 Candace Louise Curtis v Anita and Amy Brunsting filed TXSD 2/27/2012
[7] Parr v Dunegan 2012 13022 (190th Judicial District)

30. On March 8, 2012, in reliance upon the material misrepresentations contained in Defendants' Motion and Affidavit, Judge Hoyt dismissed Plaintiff Curtis' Pro se Petition sua sponte, under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal and was forced to endure the delay and expense of that effort.

31. Then on March 9, 2012, Bobbie Bayless filed a petition for deposition before suit on behalf of Carl Brunsting in Harris County District Court.[8]

32. *On January 9, 2013,* the Fifth Circuit Court of Appeals, in a unanimous decision, reversed and remanded back to the Southern District of Texas clearly verifying that the Brunsting trust is not the estate of Nelva Brunsting.[9]

33. Plaintiff Curtis immediately filed for a protective order.

34. *On January 29, 2013,* Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court raising claims exclusively related to the Brunsting trusts then in the custody of the federal court.[10]

35. On April 9, 2013, in response to Plaintiff Curtis' application for a protective order, the Honorable Kenneth Hoyt issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval and commanding specific performance. (A5 attached E156-E160)

36. Also on April 9, 2013 Bobbie Bayless filed claims against Amy, Anita and Carole Brunsting in Harris County Probate Court No. 4, in the name of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) and after trailing and

[8] 201214538 - (Court 080)
[9] Curtis v Brunsting 704 F.3d 406
[10] No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County, TX

dogging Plaintiff Curtis' litigation always one step behind, Bayless named federal Plaintiff Curtis a "Nominal Defendant" while alleging no claims. (A6 attached E161-E180)

37. Due to a change of circumstances in late 2013, Plaintiff Curtis retained Houston attorney Jason Ostrom to assist with her federal lawsuit.

38. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants agreed to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting as an involuntary plaintiff, thus polluting diversity and facilitating a remand to Harris County Probate Court on May 22, 2014.(A7 attached E181-E185)

39. In exchange, Defendants agreed to abide by the federal injunction and all orders of the federal Court and on that basis the Court approved the amended complaint and entered an Order for Remand to the Harris County Probate Court. (A8 attached E186-E187)

40. The Motion granting Plaintiff Curtis' remand was filed in the estate of Nelva Brunsting, No. 412249 on June 6, 2014, and the Harris County Clerk assigned Curtis v Brunsting auxiliary number 412249-402.

41. The Defendants ask the Court to believe Plaintiffs are responsible for a myriad of lawsuits, but Probate No. 4 has three cases on record and Harris County District Court has two more. Only one of these suits was filed by Plaintiff Curtis and it was filed in the federal court on February 27, 2012. The state court cases are:

a. No. 201214538 – 80th Judicial District Court of Harris County Texas, Carl Henry Brunsting and the estate of Nelva Brunsting Petition to take depositions before suit.
b. No. 412249 Carl Henry Brunsting executor of the estate of Nelva Brunsting, vs Amy, Anita and Carole Brunsting.
c. No. 412249-401 Carl Henry Brunsting Individually vs Amy, Anita and Carole Brunsting, and

d. No. 412249-402 Candace Curtis v Anita and Amy Brunsting, filed TXSD February 27, 2012, remanded from the federal court to the state probate court May 9, 2014.

e. No. 2013-05455 - Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County Texas. (A9 attached E188-E207)

VII. THE HEINOUS EXTORTION INSTRUMENT

42. An instrument called "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (QBD) allegedly signed by Nelva Brunsting and notarized by Candace Kunz-Freed on August 25, 2010, was propped up as an amendment to the irrevocable trust agreement after Elmer's death, when the trust agreement could only be amended or revoked by a court of competent jurisdiction. (Exhibit A2 @ E69) (See also Dkt26-4 QBD signature page anomalies)

43. The record shows the QBD was drafted and notarized by Defendant Candace Freed. This instrument has been the object of numerous unresolved motions for summary and declaratory judgment in the state probate court (Dkt 26-5, 26-11, 26-14) and those motions remain unresolved because the probate court refused to rule on any substantive issues. There would be a logical reason for that, albeit not an ethical one.

44. Plaintiffs hereby incorporate the Addendum of Memorandum filed September 15, 2016 (Docket entry 26) as if fully restated and would ask the Court to review (Dkt 26-5 E20-E28), (Dkt 26-8 E343-E393), (Dkt 26-11 E406-E452), (Dkt 26-14 E497-E1187), and (Dkt 26-19 E1252-E1253) as follows:

a. Dkt 26-5 is Defendant(s) Anita and Amy Brunsting's joint no evidence motion for partial summary judgment, filed in the state probate court June 26, 2015, claiming the Plaintiffs could produce no evidence of the invalidity of the extortion

instrument also known as the August 25, 2010 QBD. That motion was scheduled to be heard on the last day set for summary judgment motions, August 3, 2015 but has never been heard. (Dkt 26-19)

b. Dkt 26-11 (E406-E452) is Plaintiff Curtis' answer to Exhibit 26-5, along with motion and demand to produce the QBD and qualify it as evidence so one could discuss its efficacy or the lack thereof. Those motions have never been heard.

c. Dkt 26-7 (E289-E342) is the federal Injunction Hearing Transcript

d. Dkt 26-8 is Carl Brunsting's Motion for Protective Order (E343-E393) regarding wiretap recordings.

e. Dkt 26-14 (E497-E1187) is an unresolved motion for partial summary and declaratory judgment that expressly seeks to have the illicit instruments, drafted by Candace Freed, at the request of Anita Brunsting, including the heinous extortion instrument, declared invalid. The probate court has refused to set these motions for hearing.

f. Dkt 26-16 (E1189-E1242) March 9, 2016 ambush hearing transcript.

g. Dkt 26-19, the agreed upon Docket Control Order.

45. As the Rule 60 Motion states (Dkt 26 pgs 3-31) Defendant(s)' Amy and Anita Brunstings' joint No-Evidence motion was removed from the calendar along with Bayless' "Carl Brunsting" Motion for Partial Summary Judgement and Curtis' Motion and demand to produce evidence, allegedly to hear an emergency motion for protective order (Dkt 26-8 E343-E393 and transcript of hearing Dkt 26-12 E453-E494) regarding wiretap recordings disseminated by Anita Brunsting's counsel, Defendant Bradley Featherston, via certified mail on or about July 1, 2015.

46. All of the motions regarding the legitimacy of instruments and actions were kicked to the curb along with the Docket Control Order (Dkt 26-19 E1252-E1253) and the scheduled trial date, while Plaintiff Curtis was on an airplane home from the July 22, 2015 hearing appointing Temporary Administrator Gregory Lester. (Dkt 25-A). There is no order in the probate record that would explain any changes to the docket scheduling Order.

47. Plaintiff Curtis then filed her motion for partial summary and declaratory judgment (Dkt 26-14) and asked to have dispositive motion hearings placed back on the Calendar (Dkt 26-15 E1188) asking, as well, to have the case of Anita and Amy Brunsting's co-conspirator Defendant Candace Freed, transferred from the Harris County District Court and consolidated in the probate Court with the rest of the co-conspirators.

VIII. DEFENDANTS' RULE 12(B)(6) AND 9(B) ARGUMENTS

48. Defendants Vacek and Freed (V&F), in support of their Rule 12(b)(6) Motion to Dismiss (Dkt 19) offer the detailed background statement from their accompanying Rule 12(b)(1) Motion (Dkt 20) claiming facts inapposite to those of the complaint and whereas an alternative set of facts may be pled and considered under a Rule 12(b)(1) factual attack, no such authority exists with a Rule 12(b)(6) challenge.

49. Defendants seek to incorporate their alternate claim of facts presented under Rule 12(b)(1) but do not support those claims by affidavit, exhibits or specific reference to any evidentiary hearings in which such matters were judicially determined, because there have not been any evidentiary hearings or substantive issues decided since the injunction hearing, April 9, 2013, in the federal Court (Dkt 26-7 E289-E342).

50. After 2 and one-half years in the Probate Court, the only place in the record of any related proceeding where one can actually see findings of fact and conclusions of law is in the federal injunction issued by the Honorable District Judge Kenneth Hoyt April 9, 2013.

51. In Section A of Defendants' Arguments and Authorities V&F claim Plaintiffs have not adequately pled a violation of the RICO Act and in support they cite to the elements necessary to plead 18 U.S.C. 1962(b). Plaintiffs agree they have not pled a violation of 1962(b), as Plaintiffs plead 1962(c) claims, which are substantially different from the 1962(b) claims filed against several judges of the Harris County Probate Court in the Sheshtawy, Peterson, Rizk RICO suit filed March 18, 2016[11]. The motions to dismiss in that case were taken under advisement by that Court September 12, 2016, and this case is related by continuity.

52. Defendants use RICO as a blanket general term when the RICO statutes are each very narrow and prohibit four separate and specific kinds of activity. The elements of 18 U.S.C. §1962(a), §1962(b) and §1962(c) are distinguishable, and elements of one cannot be merged with those of another under the generalized term RICO.

53. Ultimately Defendants insist Plaintiffs are pleading claims not contained within the four corners of the RICO complaint, such as malpractice, or that Plaintiffs failed to meet the evidentiary particulars that concatenate each Defendant's conduct to a pattern of racketeering activity.

54. Defendants ask the court to view the complaint in a vacuum, while simultaneously asking the court to assume a contrary view of the facts by proxy under their unsupported companion Rule 12(b)(1) factual challenge (Dkt 20).

[11] Case 4:16-cv-00733 filed TXSD 3/18/2016

IX. DEFENDANTS' RULE 12(B)(1) ARGUMENTS

55. Defendants' first allegory is that the matter before the court is merely the latest lawsuit filed in some "Brunsting Sibling Saga" and "Plaintiff Candace Louise Curtis' second attempt to have a federal judge consider these issues".

56. Defendants fail to mention that the first federal Court issued an injunction in response to Plaintiff Curtis' application, finding the four necessary criteria to have been met, including a likelihood of prevailing on the merits. That hearing was held before the Honorable Kenneth Hoyt, April 9, 2013, and represents the only evidentiary hearing amongst a plethora of state court lawsuits filed by Bobbie Bayless in name of Carl Brunsting and the estate of Nelva Brunsting.

57. When Plaintiffs filed this RICO suit there was no docket control order in any state court, no trial date, the probate Court refused to set hearings on the pending dispositive motions, and Plaintiff Curtis was, and is, continually being threatened with deprivation of property, under the illicit QBD instrument drafted by Defendant Candace Kunz-Freed, that Defendants Amy and Anita Brunsting perpetually refuse to produce and qualify as evidence. (Dkt 26-7)

58. Defendants V&F at page 2 plead that Curtis' first federal lawsuit alleged similar claims, but fail to mention that nothing substantive has been resolved in the original suit 4:12-cv-592, and that those unresolved claims are subsumed within the RICO matter that is currently before this Court, because the state court has refused Plaintiff Curtis access to the court and due process of law, refusing to exercise jurisdiction while pretending they had it to begin with.

59. Plaintiff will admit that both suits arise from a common set of facts and that the facts necessary for the pending RICO complaint were developed over the course of the Defendants' perpetual efforts to avoid evidentiary hearings and especially any situation where they would

have to actually produce the archetype of the QBD instrument, drafted and notarized by Candace Freed, and qualify it as evidence.

60. Defendants assert at item 15 that:

> *On July 24, 2015 Judge Butts appointed Greg Lester ("Lester"), as a temporary administrator, to determine the merits of the claims asserted in the various lawsuits.*

61. On January 20, 2016 Lester provided a report, (Dkt 26-9) wherein he concluded:

- *All of the legal actions taken by Nelva were within her authority;*
- *Any damages for unequal distribution can be resolved by equalizing the distributions to all siblings; and*
- *Recommended that the Probate Court should uphold the "No Contest" Clause*

62. What the Lester Report actually says is "All of the legal actions taken by Nelva were within her authority under the broad language of the restatement." Mr. Lester fails to list the actions allegedly taken by Nelva Brunsting which he concludes to have been "legal actions" nor does he cite to any specific language in any trust instrument in support of his vague assertions, while ignoring the specific language of the trust and the existing record.

63. Defendants V&F also cite that Mr. Lester "Recommended that the Probate Court should uphold the "No Contest" Clause." Plaintiffs are certain V&F and Lester each refer to the "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (the alleged 8/25/2010 QBD a.k.a. the extortion instrument).

64. Rather than argue over facts not in evidence, Plaintiffs will simply quote the closing paragraph of Plaintiffs' Addendum of Memorandum at line 120[12]. (Dkt 26)

[12] Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16 Page 1 of 27 and as an Addendum to the Complaint filed in 4:16-cv-1969 in TXSD 7/05/2016

> *120. If there is such a magical document as this 8/25/2010 QBD, that trumps federal injunctions and the Orders of a federal Judge, renders remand agreements nugatory, removes fiduciary obligations, forecloses beneficial interests, taints the blood of innocent remaindermen, amends what can only be amended by a court of competent jurisdiction and revokes what can only be revoked by a court of competent jurisdiction, the Defendants and their attorneys should be brought before an honorable Court where they will actually be compelled to produce the supernatural thing and qualify it as evidence.*

65. If any Defendant could have produced the instrument and qualified it as evidence, they would have done so long ago. Instead, they pull their joint no evidence motion from calendar on the very last day for summary judgement hearings and negate the agreed upon docket control order, and then show up March 9, 2016 acting as if the thing had been held to be valid. (Dkt 26-16)

66. Defendants argue that similar claims are currently pending in a malpractice suit in state court, but no state court ever had the capacity to assume in rem jurisdiction over the Brunsting trust res in the custody of a federal court.

67. Whether or not the facts are common, professional carelessness is not an element of a racketeering lawsuit and Defendants cling to their claim of professional negligence because it is the only thing that gives them any hope of hiding their enterprise participation behind the Doctrine of Privity.

X. STANDING

68. Defendants' Motion seeks to down-play participation in a lawyer-run wealth redistribution enterprise, asking the Court to believe the matter at issue is no more than a family dispute, as if the betrayal of fiduciary obligations and the violation of property laws was a mere soap opera. Nothing could be further removed from reality. Every Judge in the Harris County

Probate Court is being sued in the Southern District of Texas, under either racketeering or civil rights, or both, and that does not appear to be a coincidence.

69. One thing Plaintiffs and Defendants appear to agree on is that Munson is not a party to any of the prior lawsuits nor is he a beneficiary of the Brunsting Family of Trusts, and that: "It is inconceivable that he could be injured as a result of V&F's drafting of the estate planning documents." Unfortunately Defendants seek to discolor the facts while omitting the obvious.

70. Plaintiffs filed as Private Attorneys General under the Racketeer Influenced Corrupt Organization statutes, individually and on behalf of the public interest.

71. A recent Carnegie report (Exhibit A10 attached E208-E245) cites judicial corruption as a major factor affecting domestic security and international trade, because companies are reluctant to invest in foreign trade or set up foreign offices in nations with low human rights ratings because of the inability to depend on the protections of law.

72. Because Plaintiff Munson's standing has been specifically challenged, the following information is in order. Munson is also a victim of public corruption in his local environment and believes public corruption conspiracies are infectious social diseases, and that the single greatest threat to the security of a free state comes from a corrupt judiciary as the judiciary is the final vestige for seeking remedy within the established system.

73. There are three variations on the private attorney general and those are the substitute, the simulated and the supplemental. A supplemental private attorney general is generally a private attorney who acts to supplement the public prosecutorial function, which is what Congress envisioned in fashioning 18 U.S.C. 1964(c) after the 1914 Clayton Act. The RICO statutes are an example of the Private Attorney General as a "Supplemental Law Enforcer", and the only place

in our law where a private citizen can be a private attorney general without also being an attorney.

74. In claiming Munson lacks standing, Defendants' motion claims that he has suffered no tangible injury to his business or property but, unlike Defendants, Plaintiff Munson does not so easily put a dollar and cents price tag on public justice nor is required to do so. Conspiracies involving public corruption of this type, adversely affects not only the public interest generally but also individual claimants and the efficacy of the work product of honest legal professionals.

75. The People are offended by the mere notion that the public suffers no tangible injury as a direct and proximate result of public corruption and do not accept the idea that public offenses do not injure the morals of the society or that members of the public have no standing to prosecute public corruption. A tangible injury need not be significant for standing purposes and every member of the body politic has a property interest in honest government. Any conduct that injures trade is also injurious to the public trust. Congress created the private right of remedy at 18 U.S.C. 1964(c) specifically for the purposes stated herein.

76. All of these Defendants are converting our court rooms, institutions, and resources intended for the administration of public justice, into a place of conducting illicit private business for personal gain, thus diminishing and often eliminating the availability of those resources for the honest administration of public justice, while also injuring individual members of the public as part of their enterprise operations.

77. Curtis v Brunsting is not the estate of Nelva Brunsting,[13] a beneficiary of a trust is not an heir and a racketeering conspiracy is not malpractice.

[13] Curtis v Brunsting 704 F.3d 406

XI. CONCLUSION

78. Curtis v Brunsting is not an isolated specific instance but merely one example of a variation on a shakedown practiced over and over again against elder, disadvantaged and familial victims.

79. Each of these Defendants will claim that Plaintiffs failed to plead a particular act that implicates them in a conspiracy, but Candace Kunz-Freed was the architect of this entire fiasco (Dkt 26-11 and 26-14) and the very real fact here is that Defendant Candace Kunz-Freed is accused of using the Vacek Design in drafting and notarizing the illicit documents that provided Anita Brunsting with the appearance of authority used to commit numerous specifically alleged predicate acts.

80. Another very real fact is that without those falsified and illicitly drafted documents, none of these other Defendants would have had the opportunity to perform their part in the color of litigation racketeering conspiracy.

81. It would be improper for the Court to dismiss a Petition unless the claimant can prove no set of facts that would entitle it to relief. That is clearly not the case here. Plaintiff Curtis' original complaint made a prima facia claim by affidavit and 46 attached exhibits, (4:12-cv-592 filed TXSD 2/27/2010), and each has maintained its veracity throughout. The fiduciaries in that earlier action, Anita and Amy Brunsting, have yet to meet their burden of bringing forth evidence.

82. The notion that Vacek & Freed can betray Privity, enter into and cultivate conflicting interests undermining the efficacy of the products and services sold to Elmer and Nelva Brunsting, and still cling to the protection of the doctrine of privacy, is an interesting concept that begs an audience.

Wherefore Plaintiffs move this Honorable Court for an Order denying the Motions to Dismiss filed by Defendants Albert Vacek, Jr. and Candace Kunz-Freed, August 7, 2016. (Dkt 19 and 20).

Respectfully submitted,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 27th day of September, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on August 7. 2016 by Defendants Albert Vacek Jr. & Candace Kunz-Freed in the above styled cause (Dkt #19 & 20) should be Denied.

It is SO ORDERED

_____
Date

_____
The Honorable Alfred H Bennet
United Stated District Judge

Attached Exhibits

A1 - Original 1996 Trust	E1-E61
A2 - 2005 Restatement	E62-E148
A3 - 2007 Amendment	E149-E151
A4 – Amy March 6, 2012 Affidavit	E152-E155
A5 - 2013-04-09 Preliminary Federal Injunction	E156-E160
A6 - PBT-2013-115617 Bayless Probate Petition filed 4/9/2013	E161-E180
A7 - 2014-05-09 Ostrom Motion for Remand	E181-E185
A8 - 2014-05-22 PBT-2014-170812 Federal Order Granting Remand	E186-E187
A9 – Bayless District Court Petition filed 1/29/2013	E188-E207
A10 - Carnegie Corruption and Security Report	E208-E245

THE

BRUNSTING FAMILY

LIVING TRUST

Prepared By

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THE BRUNSTING FAMILY LIVING TRUST

Article I

The Founding of Our Family Living Trust

Section A. Our Declaration of Trust

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY

Second, CARL HENRY BRUNSTING

Third, AMY RUTH TSCHIRHART

A successor Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death or disability. Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the ____ day of _____, 19_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits

which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased

Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

a. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

b. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

c. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan", our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only. Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living

descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any

amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provided otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the

parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the

Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when

the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit by the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when

the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity

serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals,

other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: October 10, 1996

_____
ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On October 10, 1996, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Notary Public, State of Texas

THE RESTATEMENT OF

THE BRUNSTING FAMILY

LIVING TRUST

Prepared By

Albert E. Vacek, Jr.

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17-2330.1878

THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Article I

Our Family Living Trust

Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

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Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

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Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

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Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

1. Minimum Distribution

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

2. Distribution Restrictions

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

3. Exclusion of Older Adopted "Descendants"

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

4. Payment of Estate Taxes of Plan Participant

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

5. Delivery of Trust to Plan Administrator

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

6. Distribution to the Beneficiaries

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

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of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

7. Distribution of More Than the Minimum Distribution

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Section D. Residence Homestead

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

1. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

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3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

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Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

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If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

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Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

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Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

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Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Section E. Application to Founders

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

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Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

17-20330.1940

Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

17-20360.1941

Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

17-20360.1950

Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

17-03360.1951

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

17-20360.1953

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

17-20360.1956

Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

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Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas

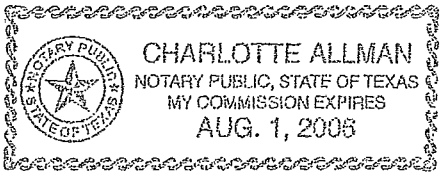

Exhibit 8

The 2007 Amendment to the Brunsting Family Trust

FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

ELMER H. BRUNSTING,
Founder and Trustee

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

EXHIBIT "A"

Article IV

Our Trustees

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Exhibit 1

Affidavit filed in the federal court by Defendant Amy Brunsting March 6, 2012

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

CANDACE LOUISE CURTIS	§	
	§	
	§	CIVIL ACTION NO. H-12-CV-592
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING, and	§	
AMY RUTH BRUNSTING	§	
	§	
	§	

AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	Ä	
	Ä	
Plaintiff,	Ä	
VS.	Ä	CIVIL ACTION NO. 4:12-CV-592
	Ä	
ANITA KAY BRUNSTING, *et al*,	Ä	
	Ä	
Defendants.	Ä	

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiffôs, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendantsô, Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiffôs renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiffôs motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust (ñthe Trustò). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

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recovery of legal fees and damages. The Court denied the plaintiffôs request for a temporary restraining order and for injunctive relief. However, concurrent with the Courtôs order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendantsô argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiffôs case.

The plaintiff gave notice and appealed the Courtôs dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Courtôs dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiffôs renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to ñprovide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting.ò According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiffôs request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Courtôs power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

17-20360.1974

PROBATE COURT 4

NO. 412.249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

1 pers. in 4/9/13

PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

I.

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II.

Parties

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] These estates are collectively referred to herein as the "Estates." In his individual capacity, Plaintiff is referred to herein as "Carl." Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the "Family Trust"). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

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Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.

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Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust ("Anita's Trust").

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister. It is believed that Amy's counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva's death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the "Current Trustees". Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust ("Amy's Trust"). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl's Trust.

5. Defendant Carole Ann Brunsting ("Carole") is Carl's sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron's offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva's health care power of attorney and was made a joint signatory on Nelva's bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust ("Carole's Trust").

6. Candace Louise Curtis ("Candy") is Carl's sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust ("Candy's Trust") of which Anita and Amy are the co-trustees.

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III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

(a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;

(b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;

(c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;

(d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;

(e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistence to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

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Exhibit 1.029.60

powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than $150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

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accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

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tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

V.

Construction of Trust and Suit for Declaratory Judgment

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

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from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

VI.

Demand for Trust Accounting

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.

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25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

VII.

Breach of Fiduciary Duties

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;

b. resisting accountings of property and transactions;

c. failing to abide by the terms of the various trust instruments;

d. failing to preserve property and to prevent losses of property;

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e. conveying property in ways which were detrimental and in violation of their obligations;

f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;

g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;

h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;

i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;

j. failing to prevent transfers, gifts, or removal of assets;

k. failing to make appropriate and equal distributions;

l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;

m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;

n. failing to prevent transactions which were detrimental to their family members and the trusts;

o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and

p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of

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those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minium jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

VIII.

Conversion

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

IX.

Negligence

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.

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33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

X.

Tortious Interference with Inheritance

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

XI.

Constructive Trust

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the

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amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

XII.

Civil Conspiracy

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

XIII.

Fraudulent Concealment

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

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XIV.

Discovery Rule

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

XV.

Tolling of Limitations

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

XVI.

Conditions Precedent

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

XVII.

Prejudgment Interest

45. Plaintiff is also entitled to prejudgment interest on his claims.

XVIII.

Request for Attorneys' Fees

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

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in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

XIX.

Request for Injunctive Relief

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it

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Exhibit 2 Page 17 of 20

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may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

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Document 1-6 Filed on 05/26/16 in TXSD Page 19 of 20

XXI.

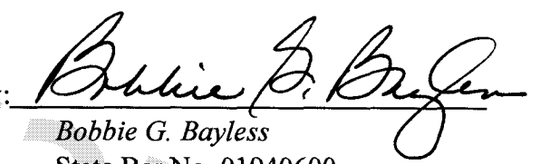
Plaintiff's Requests for Disclosures to Defendants

52. Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

BAYLESS & STOKES

By: 

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bayless@baylessstokes.com

Attorneys for Plaintiff

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VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

Carl Henry Brunsting
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8th day of April, 2013, to certify which witness my hand and official seal.

SHAWN M. TEAGUE
MY COMMISSION EXPIRES
April 3, 2015

Shawn M. Teague
Notary Public in and for the
State of T E X A S
Printed Name: Shawn M. Teague
My Commission Expires: 4-3-2015

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-00592
	§	JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§	JURY TRIAL DEMANDED

MOTION TO REMAND

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion to Remand pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. Plaintiff filed her Original Petition bringing causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. Diversity jurisdiction existed between Plaintiff and Defendants.

2. Contemporaneously with this Motion, Plaintiff is filing her Motion for Leave to File First Amended Petition, which will add necessary parties to this case in order to have complete adjudication of all matters and to avoid inconsistent judgments. Necessary parties include Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting.

3. Plaintiff believes that the filing of the First Amended Petition and addition of necessary parties will destroy the diversity jurisdiction that is required by 28 U.S.C. § 1332(a).

4. Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased, is currently a party to

an action pending in Harris County Probate Court Number Four involving the same parties. Similar issues of fact and law are pending in that court.

II. ARGUMENTS AND AUTHORITIES

5. Here, the interests of justice and comity with State courts counsel in favor of this Court abstaining from exercising further jurisdiction over this Action and remanding it to Harris County Probate Court Number Four.

6. The First Amended Petition seeks a declaration as to certain Trust documents, and complete relief as to this issue cannot be granted without the addition of necessary parties, which will destroy diversity jurisdiction.

7. If this Court retains this case despite the lack of diversity, it is possible that inconsistent judgments may be reached as between this Court and Harris County Probate Court Number Four where the Estate of Nelva Brunsting, Deceased is pending and where similar issues of fact and law are currently pending.

8. Because diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four, equity mandates that this cause be remanded to Harris County Probate Court Number Four and consoldiated with the cause pending under Cause Number 412,249.

9. Counsel for Defendants Anita Brunsting and Amy Brunsting has been consulted and is not opposed to the remand.

IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249 and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to remand.

/s/ Jason B. Ostrom
Jason B. Ostrom

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-00592
	§	JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§	JURY TRIAL DEMANDED

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be granted.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are

opposed to this remand and that no parties have filed any objection thereto. It is, therefore,

ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429. It is further,

ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

_____

JUDGE PRESIDING

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412249

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Nelva Brunsting, Deceased

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, *et al*,	§	
	§	
Defendants.	§	

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

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It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

I CERTIFY THE COPY ATTEST MAY 15 2014 Clerk of Court Deputy Clerk

FILED 2014 MAY 22 PM 2:11 COUNTY CLERK HARRIS COUNTY, TEXAS

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Filed 13 January 29 P12:34
Chris Daniel - District Clerk
Harris County
ED101J017296628
By: Nelson Cuero

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER *(FOR CLERK USE ONLY)*: 2013-05455 / Court: 164 COURT *(FOR CLERK USE ONLY)*:

STYLED Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting vs. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:

Name: Bobbie G. Bayless
Email: bayless@baylessstokes.com
Address: 2931 Ferndale
Telephone: 713.522.2224
City/State/Zip: Houston, TX 77098
Fax: 713.522.2218
Signature:
State Bar No: TX - 01940600

Names of parties in case:

Plaintiff(s)/Petitioner(s):
Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting

Defendant(s)/Respondent(s):
Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC

[Attach additional page as necessary to list all parties]

Person or entity completing sheet is:

- [x] Attorney for Plaintiff/Petitioner
- [ ] *Pro Se* Plaintiff/Petitioner
- [ ] Title IV-D Agency
- [ ] Other: _____

Additional Parties in Child Support Case:

Custodial Parent: _____

Non-Custodial Parent: _____

Presumed Father: _____

2. Indicate case type, or identify the most important issue in the case *(select only 1)*:

Civil

Contract

Debt/Contract
- [x] Consumer/DTPA
- [ ] Debt/Contract
- [x] Fraud/Misrepresentation
- [ ] Other Debt/Contract: _____

Foreclosure
- [ ] Home Equity—Expedited
- [ ] Other Foreclosure
- [ ] Franchise
- [ ] Insurance
- [ ] Landlord/Tenant
- [ ] Non-Competition
- [ ] Partnership
- [ ] Other Contract: _____

Injury or Damage
- [ ] Assault/Battery
- [ ] Construction
- [ ] Defamation

Malpractice
- [ ] Accounting
- [x] Legal
- [ ] Medical
- [ ] Other Professional Liability: _____
- [ ] Motor Vehicle Accident
- [ ] Premises

Product Liability
- [ ] Asbestos/Silica
- [ ] Other Product Liability List Product: _____
- [ ] Other Injury or Damage: _____

Real Property
- [ ] Eminent Domain/ Condemnation
- [ ] Partition
- [ ] Quiet Title
- [ ] Trespass to Try Title
- [ ] Other Property: _____

Related to Criminal Matters
- [ ] Expunction
- [ ] Judgment Nisi
- [ ] Non-Disclosure
- [ ] Seizure/Forfeiture
- [ ] Writ of Habeas Corpus—Pre-indictment
- [ ] Other: _____

Employment
- [ ] Discrimination
- [ ] Retaliation
- [ ] Termination
- [ ] Workers' Compensation
- [ ] Other Employment: _____

Other Civil
- [ ] Administrative Appeal
- [ ] Antitrust/Unfair Competition
- [ ] Code Violations
- [ ] Foreign Judgment
- [ ] Intellectual Property
- [ ] Lawyer Discipline
- [ ] Perpetuate Testimony
- [ ] Securities/Stock
- [ ] Tortious Interference
- [ ] Other: _____

Family Law

Marriage Relationship
- [ ] Annulment
- [ ] Declare Marriage Void

Divorce
- [ ] With Children
- [ ] No Children

Post-judgment Actions (non-Title IV-D)
- [ ] Enforcement
- [ ] Modification—Custody
- [ ] Modification—Other

Title IV-D
- [ ] Enforcement/Modification
- [ ] Paternity
- [ ] Reciprocals (UIFSA)
- [ ] Support Order

Other Family Law
- [ ] Enforce Foreign Judgment
- [ ] Habeas Corpus
- [ ] Name Change
- [ ] Protective Order
- [ ] Removal of Disabilities of Minority
- [ ] Other: _____

Parent-Child Relationship
- [ ] Adoption/Adoption with Termination
- [ ] Child Protection
- [ ] Child Support
- [ ] Custody or Visitation
- [ ] Gestational Parenting
- [ ] Grandparent Access
- [ ] Parentage/Paternity
- [ ] Termination of Parental Rights
- [ ] Other Parent-Child: _____

Tax
- [ ] Tax Appraisal
- [ ] Tax Delinquency
- [ ] Other Tax

Probate & Mental Health

Probate/Wills/Intestate Administration
- [ ] Dependent Administration
- [ ] Independent Administration
- [ ] Other Estate Proceedings
- [ ] Guardianship—Adult
- [ ] Guardianship—Minor
- [ ] Mental Health
- [ ] Other: _____

3. Indicate procedure or remedy, if applicable *(may select more than 1)*:
- [ ] Appeal from Municipal or Justice Court
- [ ] Arbitration-related
- [ ] Attachment
- [ ] Bill of Review
- [ ] Certiorari
- [ ] Class Action
- [ ] Declaratory Judgment
- [ ] Garnishment
- [ ] Interpleader
- [ ] License
- [ ] Mandamus
- [ ] Post-judgment
- [ ] Prejudgment Remedy
- [ ] Protective Order
- [ ] Receiver
- [ ] Sequestration
- [ ] Temporary Restraining Order/Injunction
- [ ] Turnover

NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING	§	**IN THE DISTRICT COURT OF**
vs.	§	**HARRIS COUNTY, T E X A S**
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a THE VACEK LAW FIRM, PLLC	§	**164th JUDICIAL DISTRICT**

WAIVER OF CITATION AND SERVICE OF PROCESS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Authority, on this day personally appeared CORY REED, known to me and who being by me duly sworn upon oath deposed and stated as follows:

> "My name is Cory Reed. I am an attorney at Thompson Coe Cousins & Irons, LLP, counsel for Vacek & Freed, PLLC. Plaintiff has forwarded to me a copy of the Original Petition and Request for Disclosures filed in this case. By authorization of my client and pursuant to Tex. R. Civ. P. 119, I accept service of process on its behalf, with such service considered effective on January 29, 2013."

Further affiant sayeth not.

CORY REED

SUBSCRIBED AND SWORN TO BEFORE ME on this the 30th day of January, 2013, to certify which witness my hand and official seal.

Barbara Fernandez
Notary Public in and for the
State of T E X A S
Printed Name:
My Commission Expires:

BARBARA FERNANDEZ
Notary Public
STATE OF TEXAS
My Comm. Exp. Sept. 03, 2014

Filed 13 January 30 P12:04
Chris Daniel - District Clerk
Harris County
ED101J017298842
By: Wanda Chambers

NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING	§	IN THE DISTRICT COURT OF
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CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a THE VACEK LAW FIRM, PLLC	§	164th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Carl Henry Brunsting, Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting and files this First Amended Petition against **Defendants, Candace L. Kunz-Freed, Individually ("Freed") and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (the "Law Firm") (collectively, the "Defendants")**, and in support thereof would show the Court the following:

I.

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2]

3. Defendant Freed is an attorney licensed to practice law in the State of Texas who can be served at her principal place of business, 11777 Katy Freeway, Suite 300, Houston, Texas 77079.

4. Defendant Law Firm is a professional limited liability company formed under the laws of the State of Texas for the practice of law which can be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300, Houston, Texas 77079. Defendant Law Firm is believed to be the successor to the Law Offices of Albert E. Vacek, Jr., P.C.

5. Other parties and entities involved in the facts relevant to this petition but who are not named as defendants herein include the following:

a. The Brunsting Family Living Trust was created in 1996 by Elmer and Nelva based on the advice of the Law Firm. The trust instrument was prepared by the Law Firm. The Brunsting Family Living Trust, any amendments thereto, and the trusts created pursuant to its terms are collectively referred to herein as the "Family Trust". Plaintiff was to be the successor trustee of the Family Trust until that was changed through documents prepared by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.

b. Anita Kay Brunsting f/k/a/ Anita Kay Riley ("Anita") is Plaintiff's sister. Anita became trustee of the Family Trust through documents prepared by Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it. During that same period, Anita was named to act on Nelva's behalf in a power of attorney prepared by Defendants.

c. Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Plaintiff's sister. Amy became trustee of the Family Trust through documents prepared by

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[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it (Anita and Amy in their capacity as trustees of the Family Trust are sometimes collectively referred to herein as the "Current Trustees").

d. Carole Ann Brunsting ("Carole") is Plaintiff's sister, the party named in Nelva's health care power of attorney prepared by Defendants, and the party made a joint signatory on a bank account which received significant transfers from the Family Trust after Anita became trustee of the Family Trust. According to Carole, that arrangement was Freed's idea.

e. Candace Louise Curtis ("Candy") is Plaintiff's sister. Candy and Carl were the only beneficiaries of the Family Trust whose rights were diminished by the changes implemented by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction and venue over this case because all of the Defendants maintain their principal places of business in Harris County, Texas, and the acts and omissions giving rise to Plaintiff's claims occurred in Harris County, Texas. The damages being sought by Plaintiff exceed the minimum jurisdictional limits of the court.

7. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1), and (3) because all of the Defendants have their principal office in Harris County, Texas; Elmer and Nelva resided in Harris County, Texas; and all, or substantially all, of the acts and omissions giving rise to Plaintiff's claims occurred in Harris County, Texas.

IV. FACTUAL BACKGROUND

8. This is a case involving Defendants' negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants' actions constitute negligent misrepresentation, negligence *per se*, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of

fiduciary duty. Alternatively, a conspiracy existed between Defendants, and the Current Trustees for that unlawful purpose.

9. The Defendants assisted the Current Trustees in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva's estates and from the Family Trust. Because of the actions of the Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiff's detriment.

10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while representing Nelva, with the result being just the opposite. It is believed that Defendants not only failed to inform Nelva that they had established a relationship with the Current Trustees which put them in a conflict of interest with regard to their representation of Nelva's interests but that Defendants actually ignored that conflict of interest and their obligations to Nelva and assisted the Current Trustees in changing the terms of the Family Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. Defendants also took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss to Anita, Amy, and Carole and facilitating the loss which actually occurred.

11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what

the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things:

a. failed to address Nelva's lack of capacity to make changes to the Family Trust and her power of attorney,

b. failed to address the undue influence being exercised over Nelva by the Current Trustees,

c. planned for and prepared documents without explaining the impact of those documents to Nelva and without obtaining reasonable input directly from Nelva,

d. instead discussed changes to the terms of the Family Trust, and ultimately changes to Nelva's control over the Family Trust with the Current Trustees, with some, but not all, of Nelva's children, and to the exclusion of Nelva,

e. facilitated signatures by Nelva in circumstances which allowed there to be confusion about what was being signed and which failed to insure that Nelva signed documents with consent, with proper capacity, and with knowledge and understanding of what she was signing,

f. failed to properly advise Elmer and Nelva on the terms of the Family Trust and the proper administration of the Family Trust,

g. failed to insure that documents being prepared and arrangements being made in cooperation with the Current Trustees were not being used to improperly remove assets to the improper benefit of Anita, Amy, and Carole,

h. failed to protect Nelva's rights, both individually and as trustee of the Family Trust,

i. preferred the rights of the Current Trustees to those of Nelva and it is believed even suggested methods of undermining Nelva's rights and wishes to the Current Trustees so as to accomplish the objectives of the Current Trustees,

j. failed to refuse the representation of the Current Trustees so as to prevent a conflict of interest and failed to advise Nelva that Defendants' role in advising the Current Trustees was in direct conflict with Defendants' role as Nelva's counsel,

k. failed to take steps to inform Nelva of the objectives of the Current Trustees or to otherwise prevent those objectives,

l. failed to take steps to prevent the Current Trustees and Carole from converting assets belonging to Nelva, Elmer's estate, or the Family Trust, and even facilitated the conversion of assets, and

m. failed to require the Current Trustees to administer the Family Trust properly, in keeping with the terms of the Family Trust, and in the best interests of the beneficiaries, including Nelva.

12. Defendants' knowledge of the Nelva's lack of consent to the actions taken by Defendants is evident from, among other things, the apparent existence of documents which were not signed in Freed's presence but were made to appear as if they were, Nelva's refusal to sign documents prepared at the request of the Current Trustees, and Defendants' involvement in arranging and participating in discussions behind Nelva's back.

13. With Defendants' assistance, Nelva's power of attorney was changed, the terms of the Family Trust were changed, Nelva was ultimately removed as trustee of the Family Trust, and the Current Trustees and Carole improperly obtained control of assets belonging to Nelva, Elmer's estate, and the Family Trust of which Nelva was still a beneficiary. Thereafter, the Current Trustees and Carole were in a position to take those assets for their own benefit, and they did so, either in the form of alleged but improper expenses, improper trustee fees, other improper payments for their benefit, and unexplained and improper transfers. Once Nelva was removed as trustee of the Family Trust, the Defendants continued to claim to be representing the Current Trustees but failed to insure that the Family Trust was properly administered and that the assets of the Family Trust were properly preserved for the benefit of the beneficiaries, including Nelva.

V. ATTORNEY-CLIENT RELATIONSHIP

14. At all times material hereto, Freed was a partner, shareholder, representative, agent and/or associate attorney engaged in the practice of law at the Law Firm. All of the specific acts complained of herein are attributable to Freed's conduct while associated with the Law Firm as a

partner, agent, servant, representative and/or employee. Freed's liability and responsibility is vicarious and joint and several. Plaintiff further pleads the legal theory of *respondeat superior* as between Freed and the Law Firm.

15. Also, at all times material hereto, the Law Firm, whether acting directly, or indirectly or vicariously through its partners, agents, servants, representatives and/or employees, acted as legal counsel for Elmer and Nelva, both individually and as trustees of the Family Trust. Therefore, as the Law Firm's clients, Elmer and Nelva were entitled to absolute fidelity from all of the Defendants because of the fiduciary duty owed to them by Defendants. Plaintiff, as the personal representative of Elmer and Nelva's estates, is the successor to Elmer and Nelva's rights for purposes of establishing privity with Defendants.

VI. CAUSES OF ACTION

A. Negligence

16. Defendants' actions as described herein constitute negligence. Of course, nothing Elmer or Nelva did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in the losses and damages complained about herein. To the extent Defendants did not properly, adequately, and/or timely understand the terms of the Family Trust or other documents Defendants themselves prepared or to the extent Defendants failed to apply the applicable Texas law as it related to their representation of and responsibilities to Elmer and Nelva, Defendants' acts or omissions set out herein constitute violations of the applicable standard of care for reasonably prudent and competent attorneys practicing law in Texas.

17. But for Defendants' actions as set forth herein, the damages complained of herein would not have been suffered. Thus, Defendants' conduct was a proximate and/or producing cause

of losses and damages suffered by Plaintiff. Those damages exceed the jurisdictional limits of this court.

B. Negligence *Per Se* – Violation of Texas Penal Code § 32.43; Commercial Bribery

18. Additionally, without waiving any of the foregoing, Defendants' acts are a violation of Penal Code Section 32.43. Specifically, that statute, in pertinent part, states:

> (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, intentionally or knowingly solicits, accepts or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
>
> (c) A person commits an offense if he offers, confers, or agrees to confer any benefit, the acceptance of which is an offense under Subsection (b).

19. Defendants' actions fall squarely within the statutory definition of commercial bribery set forth above. Defendants, while aware of their fiduciary duties to Nelva and with knowledge of applicable Texas law, violated subsection (b) above by accepting and/or agreeing to accept payments from the Current Trustees for changes made which directly impacted Nelva's rights, and by agreeing to continue to represent the Current Trustees after facilitating Nelva's removal as trustee of the Family Trust. This violation of this section of the Penal Code forms an additional basis for Plaintiff's assertion that such acts constitute negligence *per se*.

C. Negligence *Per Se* – Violation of Texas Penal Code §7.02(a)(2) & (3); Criminal Responsibility for Conduct of Another

20. The Current Trustees also violated Section 32.45 of the Texas Penal Code (misapplication of Fiduciary Property). Pursuant to section 32.45, a violation occurs when a trustee intentionally, knowingly or recklessly misapplies property he holds as a fiduciary in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the

Nelva. Those representations supplied false information for Elmer and Nelva's guidance. Defendants did not exercise reasonable care or competence in making the representations or in obtaining or communicating information described herein. Elmer and Nelva had no choice but to rely on the representations to their detriment, and Elmer and Nelva were in the identifiable class of people who would be expected to rely on such representations.

25. Specifically, Defendants represented, among other things, that Elmer and Nelva's plan for their estate would be protected, and Defendants negligently failed to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew their representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentations of facts and law material to Defendants' representation of Elmer and Nelva.

26. But for Defendants' actions, the damages sought herein would not have been sustained. Those damages are in excess of the jurisdictional limits of this court.

E. Breach of Fiduciary Duty

27. Defendants, acting for the benefit of Elmer and Nelva, owed them duties to act with loyalty and utmost good faith, to act with perfect candor, to act with integrity of the strictest kind, to be fair and honest in dealing with them, to provide full disclosure to them of all circumstances concerning their representation of Elmer and Nelva's interests, and to act without concealment or deception–no matter how slight. Defendants breached these duties owed to Elmer and Nelva through, among other things, the actions described herein. Instead of protecting or benefitting their original

property is held. The Current Trustees' actions involved substantial risk of loss for Nelva and the Family Trust, and ultimately that risk became reality.

21. Defendants' actions violate Section 7.02(a)(2) & (3) of the Texas Penal Code in that they acted with the intent to assist the commission of the Current Trustees' violation of Section 32.45 of the Texas Penal Code and aided or attempted to aid in the Current Trustees' violation of that section. Additionally, the Defendants, having a legal duty to prevent the Current Trustees from violating Section 32.45 of the Texas Penal Code, acted instead with the intent to assist the Current Trustees in violating Section 32.45 of the Texas Penal Code and failed to make a reasonable effort to prevent the commission of the offense.

22. These statutes are designed to protect a class of persons to which Nelva, the Family Trust, and its beneficiaries, including Nelva, belong against the type of injury suffered. The language of the statutes set out a clear prohibition from dealing inappropriately with property held by a fiduciary or assisting another in doing so. The Defendants did just that in assisting or allowing the Current Trustees to improperly obtain control of and misuse assets owned by Nelva or the Family Trust. As a result, the statues are of the type that impose tort liability because they codify the duties owed by parties such as Defendants when dealing with fiduciaries and fiduciaries' obligations.

23. The Defendants' violation of these statues was without legal excuse as all attorneys are charged with knowledge of the law. The Defendants' breach of the duty imposed by these statutes proximately caused injury to Plaintiff because it resulted in the depletion of Nelva's assets or of the Family Trusts' assets. This conduct also amounts to negligence *per se*.

D. Negligent Misrepresentation

24. In the alternative and without waiving any of the foregoing, Defendants are liable for damages based on negligent misrepresentation. Defendants made representations to Elmer and

clients, Defendants took on the representation of the Current Trustees and made it possible for the Current Trustees to enrich themselves and Carole at Nelva's expense. In doing so, Defendants benefitted by being compensated for their actions and by taking up the representation of the Current Trustees which apparently continues to this day. Thus, both Defendants' interests and the interests of Defendants' new clients, the Current Trustees, were placed above Nelva's interests, resulting in a breach of Defendants' fiduciary duties.

F. Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty

28. Alternatively, and without waiving any of the foregoing, Defendants are liable under all three doctrines of aiding and abetting a breach of fiduciary duty and the Current Trustees' violation of certain Penal Code statutes described herein by: (1) assisting and encouraging; (2) assisting and participating; and (3) concert of action. The Current Trustees and Anita acting under Nelva's power of attorney were the primary actors who committed torts and crimes which amount to breaches of fiduciary duties as described herein. Defendants had knowledge of the Current Trustees' tortious/criminal conduct and had the intent to assist them in committing those acts.

29. The Current Trustees' acts and omissions constitute breaches of fiduciary duty. A fiduciary relationship existed between the Current Trustees and the Family Trust and its beneficiaries, including Nelva. An additional fiduciary relationship was also created because of Anita's appointment in the power of attorney also prepared by Defendants for execution by Nelva. The Current Trustees, and Anita acting under Nelva's power of attorney, breached their fiduciary duties through, among other things, acts of self-dealing; concealing material facts about their disbursement of assets belonging to Nelva, Elmer's estate, and/or the Family Trust; and making unauthorized disbursements of such assets to or for the benefit of themselves and their children, to

Carole, and to Defendants, all to Plaintiff's financial detriment. Defendants assisted and/or participated in those breaches of fiduciary duty.

a. Assisting & Encouraging

30. Defendants gave the primary actors assistance and encouragement in committing the torts by, among other things, drafting the instruments which gave the Current Trustees and Anita control of the assets, drafting instruments which were used to improperly transfer those assets, assisting in obtaining Nelva's signature on documents and/or notarizing such documents, and advising the Current Trustees about such actions. This assistance and encouragement was a substantial factor in causing the breach of fiduciary duty because Defendants' voluntary assistance provided the very apparatus that allowed the Current Trustees and Anita to take unfair advantage of Nelva, Elmer's Estate, the Family Trust, and its beneficiaries, including Nelva.

b. Assisting & Participating

31. Defendants' actions alleged herein also constitute aiding and abetting the Current Trustees' and Anita's breaches of fiduciary duties by assisting and participating in those breach of trust and fiduciary duties. Defendants substantially assisted the Current Trustees and Anita in their actions to take control from Nelva and to then improperly disburse the assets over which the Current Trustees and Anita had assumed control from Nelva. Defendants' assistance and participation, separate from the Current Trustees' acts, breached Defendants' duties to Nelva. Defendants, by virtue of their purported representation of the Current Trustees and the other actions described herein, violated their duties as Nelva's legal counsel.

c. Concert of Action

32. Defendants are also liable for aiding and abetting the Current Trustees' and Anita's tortious conduct by their concert of action. Defendants' actions in helping the Current Trustees and

Anita obtain control was not only likely to cause damage, it did cause damage by resulting in changes to the terms of the Family Trust and Nelva's power of attorney without Nelva's effective consent and, thereafter, resulting in improper disbursements to or for the benefit of Amy, Anita, and Carole. Defendants' actions in assuming the Current Trustees' representation when it was in conflict with Nelva's representation was intentional and/or grossly negligent. Defendants' own acts, along with the Current Trustees' and Anita's acts, caused the damages sustained by Plaintiff which are in excess of the jurisdictional limits of this court.

G. Fraud

33. In the alternative and without waiving any of the foregoing, Plaintiff will show that Defendants' acts and omissions constituted fraud in that Defendants made material misrepresentations or omissions which included, among others, that Elmer and Nelva's plan for their estate would be protected, as well as Defendants' failure to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew that the representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentation of facts and law material to Defendants' representation of Elmer and Nelva. Defendants either made those misrepresentations or omissions with knowledge of their falsity or made them recklessly without any knowledge of the truth and as a positive assertion. The misrepresentations and omissions were made with the intention that they should be acted on by Elmer and Nelva, and, indeed, Elmer and Nelva were compelled to rely on the

misrepresentations or omissions. As a result, Elmer and Nelva suffered damages in excess of the jurisdictional limits of this court.

34. All of the foregoing acts or failures to disclose were a proximate cause of Plaintiff's damages which are in excess of the jurisdictional limits of this court.

H. Conversion

35. Defendants' actions constitute conversion of assets to which Elmer's estate and Nelva had a superior legal right. Those actions are the proximate cause of the damages specified herein which are in excess of the jurisdictional limits of this court.

I. Conspiracy

36. Defendants' actions further constitute conspiracy to commit fraud and/or breach of fiduciary duty. Defendants and the Current Trustees were a combination of two or more persons. The object of the combination was to accomplish an unlawful purpose. Specifically, the object of the combination was to commit the breaches of fiduciary duty described herein.

37. The Current Trustees, Anita, and the Defendants had a meeting of the minds and had knowledge of the object and purpose of the conspiracy. The Current Trustees and Anita committed unlawful, overt acts to further the conspiracy by breaching their fiduciary obligations to Nelva, the Family Trust, and the beneficiaries of the Family Trust, including Nelva. Defendants committed overt acts to further the conspiracy by taking the improper actions they took to place the Current Trustees and Anita in a position of control and then to assist in the improper transfer of assets to or for the benefit of Amy, Anita, and Carole. As a proximate result of the wrongful acts underlying the conspiracy, Plaintiff suffered damages in excess of the jurisdictional limits of this court.

J. Deceptive Trade Practices

38. Defendants are liable under the Texas Deceptive Trade and Practices Act (hereinafter "DTPA") because (i) Elmer and Nelva were consumers, (ii) Defendants violated specific provisions of the DTPA, and (iii) the violations were a producing cause of Plaintiff's damages.

39. An express misrepresentation constitutes an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion, and thus violates Section 17.49(c)(3) of the DTPA. Defendants violated the DTPA by the actions described herein while accepting representation of and payment from Elmer and Nelva and thereafter facilitating the Current Trustees' improper actions.

40. Defendants' knowledge of the language of the Family Trusts, Elmer and Nelva's wishes, and Nelva's lack of understanding or consent to the changes sought by the Current Trustees, shows that Defendants' conduct, described herein, was committed knowingly and intentionally as those terms are defined by TEX. BUS. & COM. CODE ANN. Section 17.46 *et seq*. Accordingly, Defendants are liable to Plaintiff for additional damages as provided by the DTPA, including treble damages and reasonable attorney's fees necessary to bring this cause of action, all of which are being sought herein.

VII. TOLLING, FRAUDULENT CONCEALMENT, AND DISCOVERY RULE

41. Plaintiff would show that suit has been brought within the applicable statutory limitations periods. Such cause of action does not accrue until such time as there has been a legal injury and Plaintiff has brought suit within the applicable limitations of the time that Plaintiff suffered a legal injury, as that term is described in law.

42. Because Defendants fraudulently concealed information related to their involvement as described herein and/or failed to disclose same to Elmer, Nelva, or Plaintiff, this action has been

brought within the applicable period of limitations based upon when the injured parties learned, or in the exercise of reasonable diligence, could have learned of the actions.

43. To the extent any party pleads the statute of limitations as a defense, Plaintiff hereby asserts the discovery rule and would show that suit was filed within two years of Plaintiff's knowledge of such facts as would lead a reasonably prudent person to discover the Defendants' wrongful acts.

44. Further, Elmer's and Nelva's deaths resulted in a tolling of the statute of limitations, pursuant to Tex. Civ. Prac. & Rem. Code §16.062.

VIII. DAMAGES

A. Actual Damages

45. Regarding the causes of action and conduct alleged above, Plaintiff has sustained actual losses which were proximately caused by the joint conduct of Defendants. Plaintiff's damages exceed the minimum jurisdictional limits of this court. After completion of discovery, Plaintiff will amend the pleadings in order to indicate more specifically the type and amount of damages suffered.

B. Forfeiture of Fees

46. Defendants' breaches of fiduciary duty and violations of the Texas Penal Code legally deprive them of any right to a fee. Nonetheless, Defendants received fees for their services. Therefore, as additional damages, Plaintiff is entitled to a return of all fees actually collected by Defendants in their representation of Elmer, Nelva, or the Family Trust.

C. Treble Damages

47. As previously stated herein, Plaintiff seeks a money judgment as allowed by the DTPA, including treble damages.

17-20360.2019

D. Punitive Damages

48. Plaintiff seeks to recover punitive damages from Defendants, taking into consideration the nature of the wrong, the character of the conduct involved, the degree of Defendants' culpability, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and Defendants' net worth. Additionally, Plaintiff will also show by clear and convincing evidence that Defendants acted with malice because their acts and omissions were either with a specific intent to substantially cause damage to Elmer and Nelva, or, when viewed objectively from the standpoint of Defendants at the time of the occurrences in question, involved an extreme degree of risk, considering the probability and magnitude of harm to Elmer and Nelva. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Elmer and Nelva. Thus, Plaintiff requests that the fact finder determine an appropriate punitive damages award.

E. Attorney's Fees

49. Because of Defendants' violation of the DTPA, the Trusts are entitled to reasonable attorney's fees necessary to prosecute this action. A reasonable attorney's fee recovery, including appellate fees, should be assessed against the Defendants. Plaintiff is also entitled to recover attorney's fees against Defendants pursuant to Tex. Prop. Code Ann. §114.064.

IX. INTEREST AND CONDITIONS

50. Plaintiff is entitled to prejudgment interest.

51. All conditions precedent to Plaintiff's right to recover have been performed or have occurred. The 60 day pre-suit notice normally required by Tex. Bus. & Comm. Code §17.505(a) is

not required because it is impracticable in light of the potential argument that certain limitations periods are nearing expiration.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and that, after a trial on the merits, the Court grant the relief sought herein and award such other and further relief, both legal and equitable, to which Plaintiff is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Telecopier on the 30th day of January, 2013, as follows:

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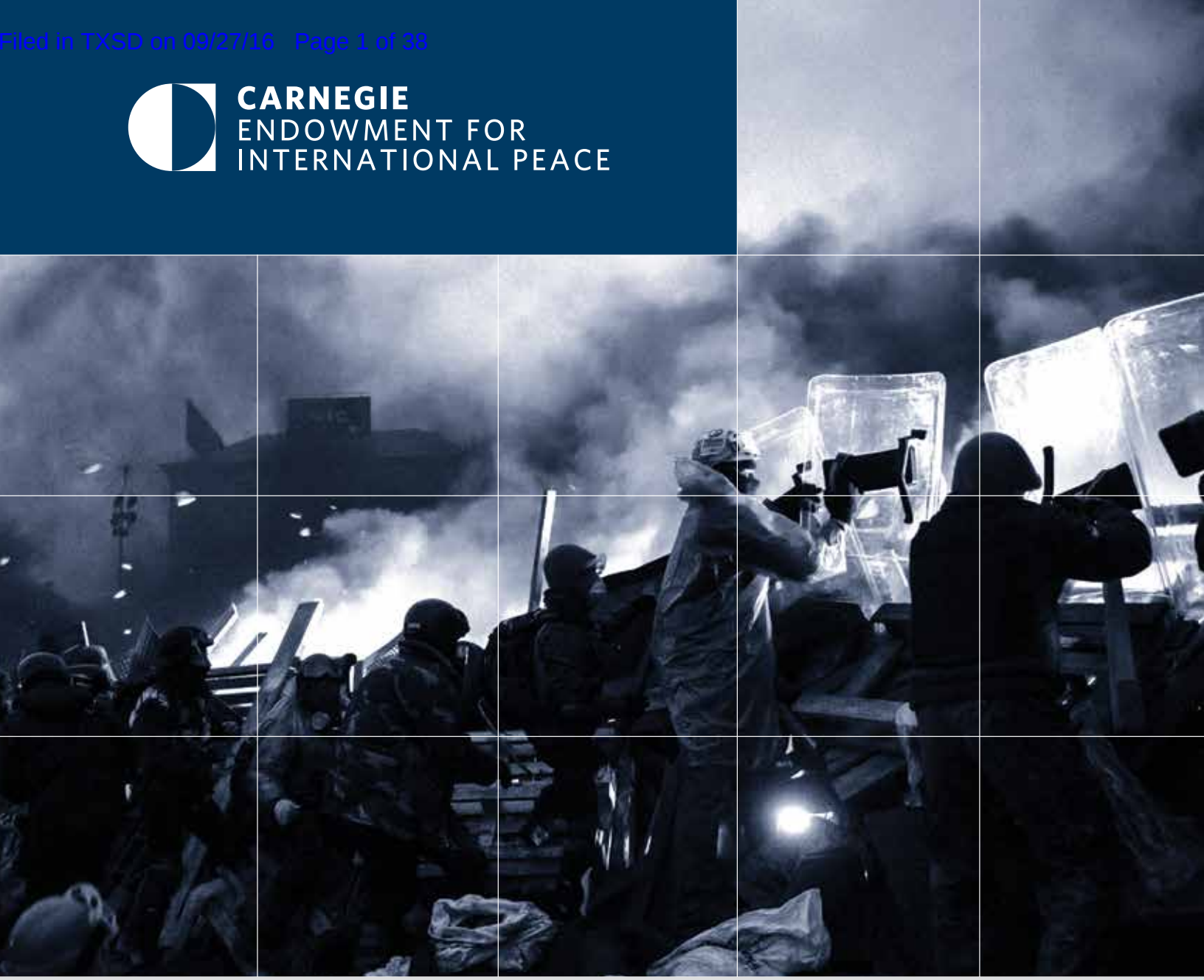
INTERNATIONAL PEACE



CORRUPTION

The Unrecognized Threat to International Security

Working Group on Corruption and Security

17-20360.2022

JUNE 2014

CARNEGIE
ENDOWMENT FOR
INTERNATIONAL PEACE

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Working Group on Corruption and Security

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Carnegie Endowment for International Peace	30

Participants

This paper grew out of a workshop and follow-on activities in which the following organizations, among others, took part:

American University Washington College of Law
Bloomberg News
Business Executives for National Security
Canadian Department of Foreign Affairs, Trade, and Development
Carnegie Endowment for International Peace
Egyptian Initiative for Personal Rights
Egyptian Transparency and Integrity Center
Fund for Peace
Global Financial Integrity
Global Integrity
Global Witness
Good Governance Group
Leveraged Outcomes LLC
National Endowment for Democracy
Norwegian Ministry of Foreign Affairs
Office of the Special Inspector General for Afghanistan Reconstruction
Open Society Foundations
Transparency International, Secretariat
Transparency International, country chapters: Bangladesh, Colombia, Peru
Transparency International, Defence and Security
U.S. Department of Defense
U.S. Department of Justice
U.S. Department of State
U.S. Department of the Treasury
World Bank Group
World Justice Project

The work was facilitated by Sarah Chayes.

Participants in this project are grateful to Yusuf Ahmad, Tiffany Joslin, and Molly Pallman for their support, and to the UK Department for International Development, whose funding and collaboration made this project possible.

Summary

Systemic corruption has an unrecognized bearing on international security. Policymakers and private companies often pay insufficient attention to corruption when deciding what foreign and defense policies to pursue or where to invest. Greater understanding of the nature of acute corruption and its impact on global security would contribute to a better assessment of costs and benefits and therefore to improved policy and practice.

Security Implications of Severe Corruption

- Acute corruption should be understood not as a failure or distortion of government but as a functioning system in which ruling networks use selected levers of power to capture specific revenue streams. This effort often overshadows activities connected with running a state.
- Such systematic corruption evokes indignation in populations, making it a factor in social unrest and insurgency.
- It contributes to other international security threats, such as symbiotic relationships between states and transnational organized crime networks, facilitation for terrorist organizations, permeable international security regimes, and acute economic disruptions.
- Corruption does not fuel these threats alone. It combines with other risk factors, such as ethnic, religious, or linguistic rifts in a population or severe economic disparities, to increase the likelihood of a security challenge.
- Western policymakers typically prioritize other considerations, such as immediate security imperatives, the economic or strategic value of maintaining relations with a given government, or return on investment, over corruption concerns. As a result, Western institutions and individuals often enable corrupt governments, exacerbating security threats and incurring sometimes dangerous reputational risk.

Recommendations for Public- and Private-Sector Decisionmakers

Rigorously analyze systemically corrupt countries. Gather information on the structure of ruling networks, the levers of power and revenue streams they capture, and other risk factors with which acute corruption may be interacting.

Use the analysis to inform choices on engaging with severely corrupt regimes. Policymakers and business executives alike should conduct nuanced cost-benefit

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analyses before deciding to invest in a systemically corrupt state. Where involvement is unavoidable or fulfills a separate policy priority, modifications to standard operating procedures can reduce the likelihood of crises and help avoid the costs associated with interventions that might otherwise be required.

Devise creative ways to avoid enabling systemic corruption. Decisionmakers should take advantage of the wide variety of available tools and leverage when approaching corrupt countries (see appendix in full paper). Depending on the circumstances, changes in diplomatic practice, military assistance, development efforts, aid to civil society, membership requirements for multilateral regimes, business investment, and rules regulating international capital flows will be required.

Corruption: Misunderstanding the Impact

The latest in a string of popular uprisings that have toppled governments from Tunisia to Kyrgyzstan escalated into a crisis in 2014 as Ukrainians threw off the rule of then president Viktor Yanukovych and Moscow responded by invading Crimea.

At the same time, jihadis from several continents flocked to Syria, where an estimated 150,000 people were dead after three years of civil war and millions fled their homes. In Afghanistan, Taliban insurgents were exacting a record toll on local security forces as North Atlantic Treaty Organization (NATO) troops were leaving a still-unstable country in the wake of their withdrawal. And in Nigeria, militants from the Boko Haram extremist group were conducting a series of attacks on schoolchildren and villagers, while the governor of the country's central bank was fired for investigating the disappearance of some $20 billion in oil revenues.

Is there a thread linking these far-flung events, all high on the West's list of security priorities?

Acute, structured government corruption is a factor in all of them. Yet, despite the remarkable correlation, the role this phenomenon may play in exacerbating international insecurity is often overlooked.

Corruption is typically seen as a pathology, a fraying at the edges of a system or, at worst, a sign of system failure. Consequently, much of the work to devise remedies is entrusted to aid agencies and local civil society actors, whose hard-fought efforts strive for small-scale, concrete successes. These interventions tend to be focused on remedying technical deficiencies or building capacity.

The role structured government corruption may play in exacerbating international insecurity is often overlooked.

But in a range of countries around the globe, corruption *is* the system. Governments have been repurposed to serve an objective that has little to do with public administration: the personal enrichment of ruling networks. And they achieve this aim quite effectively. Capacity deficits and other weaknesses may be part of the way the system functions, rather than reflecting a breakdown.

This structural dynamic—together with the strong correlation between acute corruption and breaches of international security—suggests that corruption may be a higher-stakes problem than has been commonly thought. Foreign and defense policymakers, as well as multinational corporations, need to mainstream consideration of corruption into their decisionmaking processes.

But currently, Western governments and key business actors are not well set up to respond in this holistic way. Information on the organization, manning,

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and practices of kleptocratic networks in key countries is not systematically gathered. Corruption is not on the agenda for high-level bilateral exchanges. Experts and specialized departments working on the issue are rarely at the table when critical decisions are made. They are insufficiently resourced even to carry out the relatively marginal tasks they are assigned. And relationships or cooperation models come in too few varieties, precluding subtle or creative ways of furthering anticorruption priorities so an all-or-nothing approach prevails.

A better understanding of acute and structured corruption as a functioning system, and of how it interacts with other risk factors to exacerbate threats to international security, could better public- and private-sector decisionmaking in a number of ways. It would:

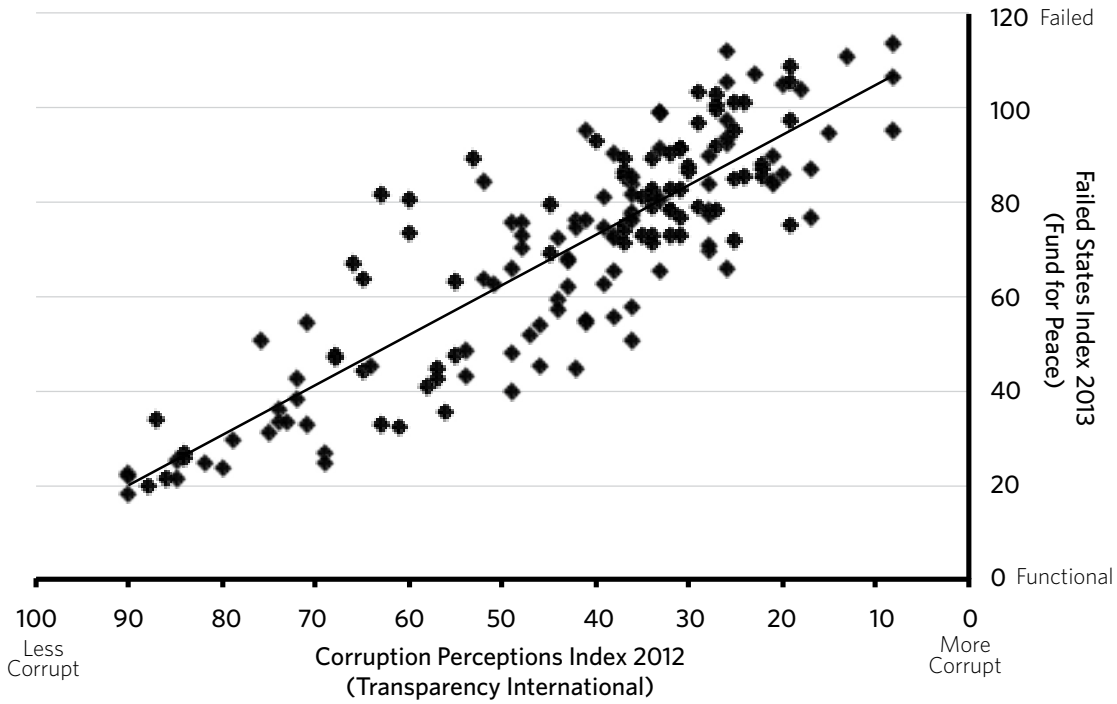
- Improve risk analysis, flagging countries such as Tunisia or Egypt prior to their respective revolutions in 2011, where—despite surface stability—kleptocratic governance, combined with other risk factors, made upheaval likely. It might help determine whether other countries, including Algeria, Angola, Bulgaria, Ethiopia, Turkey, and Uzbekistan, fall into this category today.
- Contribute to a more accurate calculation of the real trade-offs when foreign policy priorities compete.
- Paint a more detailed picture of how different interventions—including diplomatic interactions, military cooperation, private investment, and humanitarian and development assistance—play out in environments marked by acute corruption.
- Contribute to more sustainable peace deals by reducing the distortion of negotiations between governments or between governments and insurgent groups that often hampers post-conflict consolidation.

As a result, a more sophisticated understanding of acute corruption could reduce the need for military interventions once crises erupt by helping head them off through more effective use of nonmilitary policy instruments, before conflict actually breaks out. Or, where intervention has taken place, it could increase the chances of achieving security objectives by improving operations.

Corruption and Security: Basic Correlations

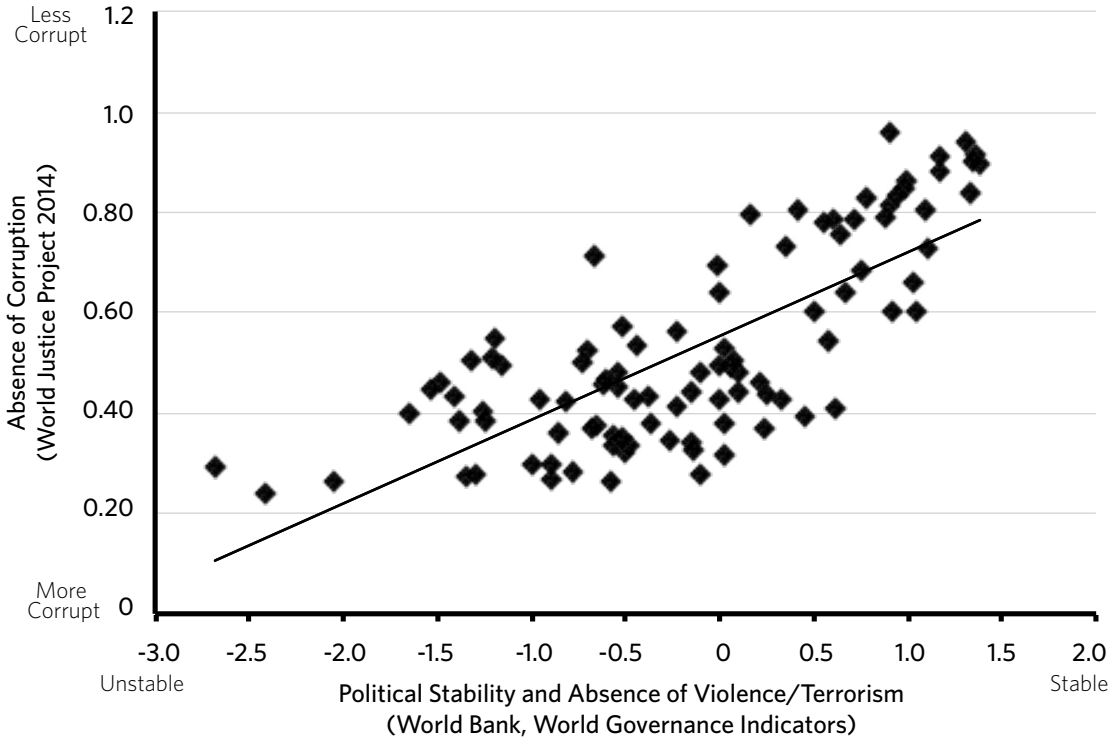
An overlay of well-known indices tracking corruption on the one hand and violence or instability on the other reveals a visible correspondence: countries characterized by severe corruption also tend to suffer conflict or state failure (see figures 1 and 2). Twelve of the fifteen lowest-ranking countries on Transparency International's 2013 Corruption Perceptions Index, for example, are the scene of insurgencies, harbor extremist groups, or pose other grave threats to international security.

Figure 1. **Corruption and State Failure**



Source: Osama Diab.

Figure 2. **Political Stability and Absence of Corruption**



While such simple correlations are arresting, they are not very informative about the dynamics of systemic corruption and how, precisely, it may threaten global security. Transparency International's Corruption Perceptions Index does a great service by focusing world attention on the problem of corruption and mobilizing efforts to fight it. While it was never intended to be an authoritative analytical tool, however, analysts and policymakers often use it that way—despite Transparency International's caveats.[1] Based in part on attitudes of elite business communities, such indices may be distorted by some of the sophisticated forms today's acute corruption takes, diminishing their value in helping predict security risks.[2] When public funds are pumped into private banks to maintain a country's capital reserves, for example, the pillage of those banks by kleptocratic elites may be invisible to outside observers—as was the case when Tunisia was widely seen as an exemplar of accountable government just months before its anticorruption revolution.[3] Where pure pay-to-play arrangements are dressed up as foreign direct investments in local industries, as occurs regularly in Uzbekistan's communications sector,[4] outside perceptions of corruption may not match the reality.

Pinpointing a correlation between failing states and states that are seen as corrupt, moreover, proves nothing about causation. Could a reputation for chaos merely be translating into a reputation for corruption, muddying the analytical waters? How to determine if state collapse is providing opportunities for corruption or if corruption is causing state collapse?

Finally, the notion that disintegrating states pose dangers to their neighborhoods constitutes little more than a tautology. More difficult to discern are clues that states seen as stable—such as Tunisia, Egypt, or Mali in 2010 or Cameroon today—may represent significant threats.

To usefully build on the correlations between severe corruption and threats to international security, closer examination is needed of both the ways corruption is structured in a given country and the independent risk factors with which it interacts.

Categories of Systemic Corruption

At issue in this context is not garden-variety corruption, the kind that exists in every country. Such public-sector criminality is never to be condoned, and it presents its own security hazards. At the most basic level, such hazards can be described as vulnerabilities that mischief makers will exploit.

But the situation is qualitatively different when a country harbors endemic corruption that pervades the political system, or when the critical levers of government action are captured—resulting in a veritable repurposing of the state to the material benefit of a few elite networks. That kind of severe corruption poses security risks of a different order.

Such acutely corrupt countries fall into two rough categories.[5]

The first consists of those whose corruption is relatively structured, whose governing systems have been bent to benefit one or a very few cliques, best thought of as networks. States may have one or multiple kleptocratic networks, which often coexist only uneasily.

One example of this type is former president Hosni Mubarak's Egypt, where two main networks controlled much of the economy—the military on the one hand and a crony capitalist network led by Mubarak's son Gamal on the other. Ukraine under former president Yanukovych also fits this mold. Afghanistan, counterintuitively, is another case, for while different networks divide up the major revenue streams, President Hamid Karzai's arbitrage has remained paramount in providing access to opportunities—and in providing protection from legal repercussions. Other countries that fit this pattern include Algeria, Angola, Azerbaijan, Cameroon, Peru under former president Alberto Fujimori, Tunisia under former president Zine el-Abidine Ben Ali, Uzbekistan, and Venezuela.

In this category of corrupt states, kleptocratic networks control the government functions that matter.

A top priority is instruments of force, both formal and informal. In Algeria and Pakistan, the ruling network is co-equal with the primary instrument of force: the army. The same is true in Egypt today. There, under Mubarak, Gamal's crony capitalist network captured its own armed branch, the detested Amn al-Shurta, or auxiliary police, omnipresent throughout Egyptian life. In Ben Ali's Tunisia, the army was excluded from the workings of the kleptocracy and the police provided the ruling network with muscle. In Cameroon, President Paul Biya relies heavily on the army's elite Rapid Response Battalion (Bataillon d'Intervention Rapide).

To ensure impunity, kleptocratic networks typically co-opt judicial function. Afghanistan's Karzai regularly calls his attorney general to influence cases or personally orders the release of suspects from pre-trial detention, aborting the cases against them.[6] In Cameroon, Biya himself appoints every member of the judiciary, "from the chief justice of the supreme court to the lowliest clerk," in the words of Christophe Fomunyoh of the National Democratic Institute.[7] Judges in Mubarak's Egypt retained a significant degree of formal independence—although the rules of criminal procedure removed much of their discretion and cultural factors encouraged a legitimist stance. As a result, the judiciary could not constitute an effective accountability mechanism.[8]

Control over legislative systems further guarantees corrupt networks' ability to achieve their objectives. Arranging technical legality for corrupt activities by way of legislation that suits them is a hallmark of kleptocracies. "They made villainous laws to circumvent law by law," says anticorruption activist Taoufik Chamari of Ben Ali's Tunisia. The retired administrator of an urban zone in Alexandria, Egypt, remembered how Ahmad Fathi Sorour, speaker of parliament under Mubarak, "made laws for Gamal so he could circumvent the whole judicial system." In Azerbaijan, President Ilham Aliyev and his New

Azerbaijan Party control the legislature, an arrangement that facilitates "legal corruption" in ways that mask the criminality of elite windfalls.[9] Otherwise, kleptocracies give network members a (revocable) pass to ignore laws.

The financial system played a remarkable role in Ben Ali's Tunisia. Banks tendered loans to Ben Ali insiders with no expectation of recovery—except as a punishment. "Every year there was a list of loans that were written off," says Tunis public accountant Imed Ennouri. "Accountants would sign off on the decisions to keep getting work." Tax fraud functioned the same way: many were allowed to dodge taxes, but audits were used as a means of coercion.[10]

In Algeria, Egypt, Nigeria, Russia, and Uzbekistan, among other countries, the civil service siphons significant public funds into private purses through fraudulent contracting procedures. Typical ruses include funding unnecessary or overpriced public works projects, substituting inferior materials for the costly, high-quality ones called for in a contract, and contracting with companies run by officials' family members. Civil servants are also instrumental in awarding public assets (such as land or business licenses) to network members at below-market prices.

Critical to the dynamic of this structured kleptocracy—and its impact on populations—is the significant vertical integration of the networks involved. While elite capture of staggering rents may dominate headlines, it is far from the sole dimension of corruption. Abusive extortion of "petty" bribes, with a percentage demanded by superiors up the chain, is also a key element, and one that adds to the population's sense of grievance. Officials purchase their positions at a hefty price and then have to make good on their investments, adding to their incentive to extort bribes. Shakedowns become a daily feature of ordinary people's lives, often inflicted with a humiliating arrogance that adds a psychological twist to the material hardship victims suffer. For those living under them, these governments become a source of lacerating shame.

The second category of severely corrupt states is somewhat different. It includes those that may experience pervasive corruption, but without the same degree of consolidation at the top of the pyramid. Monopolies on the instruments of force may be less complete, so elite networks may engage in open, violent competition to capture revenue streams—conflict that itself threatens international security. Competition over land, resources, and state revenues has fueled recent electoral violence in Ivory Coast. Pervasive, but fragmented, corrupt networks have similarly driven insecurity in Colombia for years. Local government structures, more fragile than their national counterparts, are often easier to capture. Border localities in particular play an important role for trafficking networks and may be prime targets.

Or the corrupt system in these states may simply be less coordinated. A federal political infrastructure may prevent centralization, as in India, or the weakness of government institutions even at the top may preclude the degree of control exercised by corrupt networks in the first category of states. Some

further examples of this type include Colombia, Guatemala, Honduras, Mexico, Somalia, and South Sudan.

Naturally, any effort to categorize such complex phenomena will be imperfect. Some countries may fall on the cusp between these two broad categories, and their placement or precise description may be the subject of significant debate.

Even this schematic framework, however, suggests that statements about absolute levels of corruption may be of limited value, either for predicting risk or tailoring interventions. As Dominik Zaum of the University of Reading points out, "Afghanistan and Burma (Myanmar) might have the same score on Transparency International's Corruption Perceptions Index, but how corruption affects governance, economic development, and security, what its implications are, and how it is best addressed will be different for each of these countries."[11] Popular attitudes may also differ in important details and should be investigated directly in each environment.

Similarly, emphasis on different "types" of corruption within a single country can also be misleading. When the U.S. government was developing anticorruption policy for Afghanistan in late 2010, the underlying analysis made a sharp distinction between "grand corruption," perpetrated by political leaders, "petty corruption," which was seen as greasing the wheels of public administration and therefore not a concern, and "predatory corruption"—largely defined as police shakedowns—which was described as most offensive to ordinary people.[12] Usually, however, different types of corruption like these prove to be interconnected elements of a fairly unified system whose structure and vertical integration such descriptions underestimate. To entirely disaggregate them is akin to describing the steering and brakes of a car as two entirely separate machines.

Revenue Streams

The objective in both groups of countries is, of course, wealth. Some sources of elite rents are so distinctive in their impact as to be identified with a special category of government malfunction. The "resource curse" describes countries blessed with natural resources whose riches do little to improve their populations' development outcomes. Hydrocarbon or mineral wealth, because of its concentration and frequent designation as government property, is particularly susceptible to capture by kleptocratic networks. Or such apparently free riches may spawn violent competition between more equally matched networks.

Looked at another way, however, natural resources represent merely one of a number of revenue streams that acutely corrupt governments seek to capture. Identifying such revenue streams on a country-by-country basis may help better understand the nature of each corrupt structure and suggest improved ways of engaging.

In resource-poor countries, public land is a source of wealth that kleptocratic networks almost universally endeavor to award to themselves. In arid

countries, such as Afghanistan or Sudan, access to water and thus suitability for agriculture is the key feature determining a piece of land's value. Elsewhere, as in Morocco or Tunisia, the most important factor may be proximity to the seashore or other tourist attractions. In tiny Bahrain, land of any kind is so scarce that the government has undertaken repeated dredging operations—at public expense—to add to the island's surface area, increasing it by some 10 percent over several decades.[13] Most of the new land was awarded to regime insiders for development purposes. Elsewhere, control over land corridors allows corrupt officials to dominate traffic in arms, drugs, and other destabilizing goods.

In Afghanistan, Colombia, and Yemen, opium, cocaine, or other narcotics may be a critical revenue stream that governing networks tap, usually with profoundly destabilizing consequences. Logging or the trade in restricted wildlife products may be particularly lucrative in other countries. "In Zimbabwe," write two of France's most distinguished Africa analysts, Jean-François Bayart and Béatrice Hibou, along with the African Studies Center's Stephen Ellis, "the traffic in ivory and rhinoceros horn has involved not only guerrilla movements but also the military authorities."[14] Cash crops, too, such as cocoa, cotton, or palm oil, may be captured in destructive ways by kleptocratic networks.

International officials should not underestimate the degree to which corrupt networks structure themselves to monopolize external financial assistance.

International officials should not underestimate the degree to which corrupt networks structure themselves to monopolize external financial assistance. Ill-advised European Union or World Bank infrastructure loans—such as those financing the construction of an unnecessary high-speed rail line linking Rabat to Casablanca in Morocco or the $115 million the World Bank accorded to Kenya in 1996—have become another revenue stream for corrupt governments. And when these governments are overthrown, successor regimes are left to pay back the loans, prompting citizens of some postrevolutionary countries to push for reductions in this "odious debt."[15]

Military or counterterrorism assistance provided to Algeria, Egypt, Pakistan, or Yemen may provide a perverse incentive to ensure the persistence or appearance of some terrorist activity in order to keep the dollars flowing. Even the service of soldiers, like Ghana's, as peacekeepers may become a critical revenue stream enabling kleptocratic networks.

"Government-operated nongovernmental organizations," referred to as GONGOs, may also be founded, expressly in order to capture development grants.[16] Or governments may stridently demand that foreign assistance be channeled directly into state budgets, exploiting donor countries' sensitivity to sovereignty issues or development practitioners' desire to encourage local ownership and avoid creating parallel structures.

So-called petty bribery, too, when added up, proves not to be petty at all and can represent a significant revenue stream. Typical totals could make a real difference to national economies. In Afghanistan, the annual sum of daily shakedowns people suffered at the hands of the police, doctors, judges, or

clerks processing applications for licenses, passports, or even death certificates is estimated to total between $2 billion and $4 billion.[17]

Finally, in far too many countries that practice any degree of electoral politics, campaign financing and expenditure constitute a significant source of revenue. The sheer quantity of money in politics distorts and compromises the political process and often serves as a cover for outright bribery and payoffs.

The choice of revenue stream will vary in different countries, depending on geography, topography, and historical factors, and should be examined as part of a comprehensive portrait of a given kleptocratic structure. An understanding of which revenue streams serve primarily to sustain and enable abusive government corruption—as opposed to those that provide some benefits to the population—may help inform more constructive public- and private-sector engagements.

External Enablers

In today's globalized world, no country or governing system exists in a vacuum. The ability of highly corrupt governments to monopolize their countries' resources is facilitated by outside enablers—often respectable Western institutions and individuals. Perhaps the most significant such enabler is the international banking industry. Despite real changes to banking secrecy norms and measures to curb money laundering, this sector continues to serve as a key vector for transferring national wealth into private hands and secreting it outside the country.[18] Other Western professionals, such as prestigious attorneys or accounting firms, often acting through regional subsidiaries, play a similar, if less central, role.

Careless or undifferentiated promotion of private investment by foreign ministries in the West can provide a whitewash for dubious sectors within a corrupt country, misleading Western businesses that look to their governments for signals on how to operate abroad.

In Cameroon and Ukraine, a more powerful kleptocratic network in a neighboring country (in Nigeria and Russia, respectively) has served as a key enabler for ruling elites. The stronger network may provide cash or cut-rate natural resources, collude in customs fraud, or provide other facilities that reinforce the weaker network.

Corrupt officials also use photo opportunities with Western chiefs of state, status-enhancing personal relationships, or exchanges of favors to their advantage. These officials may brandish membership in "best-practices" associations, such as the Extractive Industries Transparency Initiative or other such international clubs, to attract increased development funds or private investment.[19]

When considering how to address dangerously acute corruption overseas, Western decisionmakers must be clear-sighted about the ways actors in their own communities are facilitating corrupt behavior or contributing to incentive structures that select for it.

When considering how to address dangerously acute corruption overseas, Western decisionmakers must be clear-sighted about the ways actors in their own communities are facilitating corrupt behavior or contributing to incentive structures that select for it.

Security Threats

Many analysts see corruption—or "elite bargains"—as constituting a factor of stability in some cases, as long as competing networks divide the spoils rather than fighting over them. Making this argument in the context of Afghanistan and India, one analyst contends that elite corruption has been pivotal in creating political stability and promoting developmental goals. "Corruption," he contends, "must be accepted as an undesirable but nonetheless potentially legitimate mechanism for engaging with societies organized along different lines."[20] U.S. President Barack Obama, in a 2009 BBC interview, described then Egyptian president Mubarak as a "force for stability and good in the region."[21]

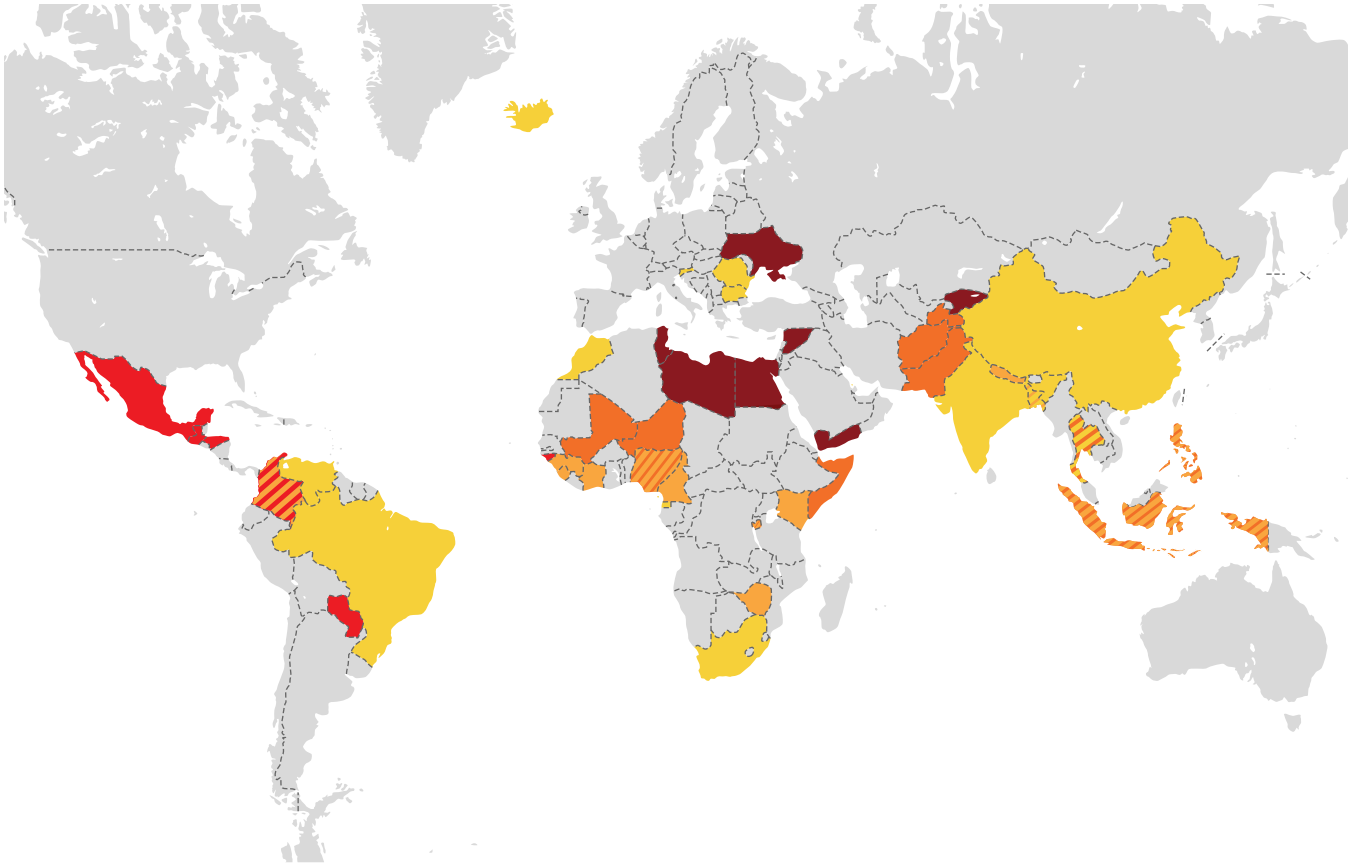
Yet, such an analysis, in its focus on elites, underestimates the agency of ordinary people—their perceptions of corruption (not Western assumptions of what those perceptions might be) and the increasing tendency of populations to lash out violently against governing systems they can no longer tolerate. The security implications of acute corruption, in fact, are likely to outweigh its potential advantages (figure 3). They vary in type depending on the structure of corrupt networks, the levers of power they capture, and the revenue streams upon which their sights are set.

One such threat, still often underestimated, is the rage that acute—and especially structured and concentrated—corruption can ignite in its victims and the likelihood that some will express that rage in violent or destabilizing ways. Every country that harbors an extremist insurgency today suffers from kleptocratic governance, including such apparent outliers as the Philippines or Thailand. The motivational literature of those extremist movements is littered with references to corruption.[22]

Every government that faced significant mass protests during the 2011 Arab uprisings, from Tunisia to Egypt, Syria, Bahrain, and Yemen, perpetrated acute corruption on behalf of narrow cliques that included top government officials and their close relatives. Marchers shouted anticorruption slogans, while posters displayed political leaders behind bars. Ukraine is just the most recent country on that list. And as mobile and electronic communications give citizens more access to information and to each other, levels of outrage—and mobilization—are likely to keep rising.

Where the United States or other Western countries are seen as enabling the kleptocratic practices of corrupt governments, moreover, some of the victims' rage will inevitably be directed outward, past the hated regime and toward its perceived American or allied backers.

Figure 3. **Corruption Related Security Incidents Since 2008**



Sudden regime change or war due to anti-kleptocracy protests
Egypt, Kyrgyzstan, Libya, Syria, Tunisia, Ukraine, Yemen

Serious violence due to corrupt alliances with trafficking networks
Colombia, Guatemala, Guinea-Bissau, Honduras, Mexico, Paraguay

Insurgency or coup traceable in part to outrage at corruption
Afghanistan, Burundi, Indonesia, Mali, Niger, Nigeria, Pakistan, Philippines, Somalia, Tajikistan, Thailand

Severe electoral violence sparked by corruption/corrupt state institutions
Bangladesh, Burundi, Cameroon, Colombia, Cote d'Ivoire, Guinea, Indonesia, Kenya, Nepal, Nigeria, Philippines, Sierra Leone, Zimbabwe

Widespread, serious popular protest or coup attempts against corruption
Bahrain, Bangladesh, Brazil, Bulgaria, China, Equatorial Guinea, Iceland, India, Morocco, Romania, Slovenia, South Africa, Thailand, Venezuela

For Atiyah Abd al-Rahman, a prominent member of al-Qaeda killed in a U.S. drone strike in 2011, the main rationale for the attacks on September 11, 2001, was the U.S. role in enabling Arab kleptocracies. In 2009, he decried U.S. and Western officials for "setting up in our countries treasonous regimes loyal to them, then backing these corrupt regimes and governments against their populations." This Western support for Middle Eastern kleptocracies, according to Rahman, was "the true cause that motivated the mujahidin to carry out" the 9/11 attacks.[23]

To the victims, in other words, the foreign governments that play an enabling role often seem no less corrupt than their own. And, exposed by ever-greater electronic media transparency, hypocritical discrepancies between stated values and actual behavior are increasingly telling.

But these dramatic recent examples of the security fallout from acute corruption do not exhaust its possible implications for international stability.

The loss of state legitimacy is a crucial factor in many crises. For, although transnational organized crime attracts much enforcement attention, the exploits of effective criminal networks do not violate expectations. Criminals behave nefariously by definition. But citizens have quite different presumptions of their governments, whose functions are supposed to include protection, care, and neutral regulation of social and economic activities. So when governments systematically behave in criminal ways, their legitimacy founders. Profound disenchantment results, and the very fabric of society begins to fray—with unpredictable consequences.

When every government function is up for sale to the highest bidder, furthermore, violations of international as well as domestic law become the norm. Nonproliferation or international sanctions regimes are regularly circumvented.[24] Intellectual property rights are ignored.

Acutely corrupt governance aids extremist organizations not only by motivating indignant citizens to join them, moreover, but also by providing a haven and logistical support for those very same groups, as officials become lax—for a fee. Nairobi residents exchange grim remarks about the "Shabab bribe" (double the normal rate) that allowed attackers from the terrorist group al-Shabab to infiltrate the Westgate Mall in a September 2013 siege that claimed more than 60 lives. In the same vein, trafficking rings that have secured safe passage past corrupt officials for migrants or sex slaves may provide transit for mules carrying a dirty bomb.

In Albania, Argentina, Bulgaria, Colombia, Honduras, Mexico, Montenegro, Mozambique, and Myanmar, among other highly corrupt countries, public officials have entered into profoundly destabilizing alliances, even symbiosis, with transnational criminal superpowers—drug and weapons syndicates whose activities span continents. While Western law enforcement efforts have focused increasingly on criminal networks in the past decade or two, the close interweaving of such networks with corrupt governments that helps sustain

them is sometimes overlooked. In these and other cases, some rival criminal network, often posing as a "Robin Hood," may mount a violent challenge to corrupt government networks. Such scenarios have exacted a shocking price from populations both inside and beyond national boundaries.[25]

In some cases, corrupt ruling elites may deliberately cultivate conflict because of the diverse opportunities for profiteering and wealth transfer that fighting affords. Persistent underdevelopment as well as the miseries attendant upon civil strife also provide access to international assistance, which corrupt officials may be loath to give up. A perverse incentive structure can thus be created, with corruption and conflict interacting symbiotically.

In some cases, corrupt ruling elites may deliberately cultivate conflict because of the diverse opportunities for profiteering and wealth transfer that fighting affords.

The militaries in countries where public corruption is pervasive make unreliable allies. As defense funding is siphoned off to the purses of the powerful, armies are often poorly trained and equipped, their rosters full of "ghost soldiers." Officers sell matériel, including to the very enemies they are supposed to be fighting. Military professionalism and capabilities are inadequate to protect borders, leaving such countries vulnerable to attack.

Kleptocratic governments cannot be expected to honor the conditions attached to the provision of military aid. Proliferation, forging of end-user certificates, and other types of fraud are likely to be the norm. And cooperation, like Pakistan's in allowing NATO to use its overland routes into Afghanistan, is often provided only for a price, which can be raised as soon as dependence is established.

Other corruption-related security threats burn on a slower fuse. Corrupt government practices contribute to severe economic distortions, threatening financial-sector stability, for example, when fraudulent banking practices prevail. Kleptocratic networks undermine the economic diversity of their countries, as they focus government energies on resource streams they can capture. Other economic sectors wither or are actively undermined by cheating on customs or other types of unfair competition. Economic opportunities dry up. Unemployment rises. And the distortions that result can have destabilizing impacts on entire economic ecosystems.

Acute corruption damages physical ecosystems just as indelibly. Local and national officials in these contexts do not care much about environmental degradation. Their policies—or lack thereof—often exacerbate the impact of climate change, for example, and incapacitate efforts to curb it. Worsening environmental conditions, in turn, increase the suffering of populations, making them more likely to revolt.[26] In climate-vulnerable zones, such as Haiti or the Philippines, the impact of natural disasters is compounded by corruption.

Interaction With Other Risk Factors

Corruption—or any other single driver—cannot be solely blamed for such complex phenomena as insurgency, revolution, economic depression, or the partial capture of states by transnational criminal organizations. Other factors, in combination with kleptocratic governance, increase the likelihood of a severe international security event at a given time.

The geographic proximity of networks determined to exploit weaknesses, such as al-Qaeda franchises capitalizing on local grievances in Syria or Mali, for example, or criminal superpowers on the hunt for leaders who can be co-opted, as in Mexico, is one such factor.

A deep rift in self-identification within a population, be it religious (as in Nigeria or Syria), ethnic and linguistic (Turkey), or related to national identity (Ukraine), might be another risk factor, as might a preexisting separatist movement. Severe economic disparities caused by local geographic or environmental factors can also increase the likelihood of security challenges. Such discrepancies are evident in Nigeria between the north and the comparatively rich south; in Syria, where residents of drought-stricken areas launched the 2011 protests; and in Tunisia, with its sharp development disparity between the affluent northern coastal area and the impoverished interior. Climate impacts or environmental damage contribute to risk factors in this category.

A consideration of the security implications of corruption in a given country should examine risk factors such as these that may conjugate with it. In many cases, security implications are exacerbated by a feedback loop between acute corruption and these other key risk factors.

Policy Trade-Offs

Significant progress has been made over the past fifteen years in building an international fretwork of laws and conventions aimed at curbing many aspects of corruption, such as the Organization for Economic Cooperation and Development's anti-bribery convention, the Group of 20's Anti-Corruption Action Plan, and stricter international money-laundering rules.

But when nations or businesses interact bilaterally with partners in highly corrupt environments, immediate priorities still tend to trump corruption concerns. This reflex should come as no surprise. Policy decisions are always the product of trade-offs between competing or even conflicting priorities, options, or policy preferences promoted by different government agencies or various departments within a single corporation.

Some of the considerations weighing on Western policymakers that may conflict with an anticorruption agenda include the value of maintaining a relationship with a particular government, especially when the country in question is seen as the "least bad" in a tough geographic neighborhood or has become the

sole source of needed goods, facilities, or services. Several kleptocratic governments maintain privileged relationships with other problem countries, and their service as interlocutors is needed. Some corrupt states have strategic geographic locations that make friendly relations with them seem paramount. Or, as in the case of China or Russia, the complexity of the great-power relationship may seem to overpower any possibility of addressing corruption.

Targeted corrupt officials may be conscious of the other items on their Western partner's agenda and strike back in ways that threaten those other priorities. To deter punitive action, venally corrupt officials may close overland routes or airspace, for example, leverage access to prized resources, cease sharing intelligence or complying with international treaties, or refuse to assist diplomatically with other problem countries when crises arise. Pressure on such governments may precipitate instability in their countries—or their leaders may suggest that it will, presenting short-term kleptocratic stability as the only alternative to chaos. Mubarak defended his rule as being "in the interest of stability, in the interest of ensuring people about [the] future."[27]

The time and bandwidth of top Western decisionmakers are even rarer commodities than spare money in their budgets, and policies that might help curb acute corruption place demands on all three. Short-term, crisis-driven decisionmaking, often the result of such constraints, favors work with whomever the current foreign partner happens to be. It encourages focus on leaders in general, not populations. It also reinforces risk aversion.

Without an accurate measure of the risks, however, or of the true likely costs and benefits of all courses of action, officials will often misjudge policy trade-offs. Resulting decisions may be counterproductive. A better understanding of the nature of acute corruption and its implications for international security—as well as systematic analysis of the costs of *not* addressing it and the availability of "least bad" alternatives—would contribute to improved policy and practice in government, civil society, and business.

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Operational Implications

This framework for understanding acute corruption, together with the rigorous study of relevant countries along the lines suggested above, may help rebalance short-term versus long-term policy trade-offs. The resulting new calculus may incite officials to shape and use some of the plentiful leverage available to government agencies—ideally in a concerted, strategic, and synchronized fashion. (Please see appendix for a partial list.) And even where opportunities to change kleptocratic behavior may seem slim, the benefits of distancing Western governments from these practices may be non-negligible.

The implications of applying this framework differ for various sectors. For the intelligence community, new priority information requirements must be drafted to capture the types of information critical to better understanding acute corruption. Without explicit tasking, collectors and analysts will not focus on such topics. The security implications of acute corruption should be included in national intelligence estimates and similar documents. Such new requirements will entail the re-tasking of intelligence capacity from other duties—such as targeting—to this effort.

Diplomats will need to significantly change their assumptions about and procedures for interacting with officials from corrupt states. They should assume that such governments will structure themselves to capture most Western interventions—from development aid to high-level visits—for their own benefit, not that of their people. As a result, diplomats should moderate the imperative to preserve good relationships with counterpart governments at almost any cost. (This rule tends to hold except in cases of countries with little strategic significance for the diplomat's home country, or states considered enemies—in which case the opposite rule tends to apply.) Too often, despite the great flexibility of available diplomatic tools, an all-or-nothing approach prevails.

Foreign assistance—both bilateral and multilateral—must be better tailored to avoid its capture as just another rent. Donors should apply stricter conditionality, including monitoring and payback clauses if benchmarks are not met.

This thinking might also suggest ways to more carefully tailor military assistance so that it contributes to beneficiary nation stability where doing so is a priority while also helping improve government practices. Cooperation with units known to serve as kleptocratic networks' attack dogs might be reduced, or the types of hardware provided to them restricted. Unnecessary, status-enhancing weaponry might be placed off-limits to such governments. And training opportunities might be shaped with these considerations in mind.

Operational implications for units deploying to such environments include changes in contracting procedures, as well as more careful selection of local partners and less tolerance of abusive behavior in exchange for these partners' helpfulness in meeting other requirements.

Analyzing acute corruption through this lens also reveals significant lessons as to the benefit of anticorruption programs that work on the margins of a kleptocratic system, especially when the bulk of international support and interaction enables that selfsame system. The Combined Joint Interagency Task Force Shafafiyat, an anticorruption program in Afghanistan, has made important contributions in road testing new military contracting procedures and exposing officers to corruption concerns. However, the guidance provided to Shafafiyat called for letting the kleptocratic Afghan system itself take the lead in eradicating corruption—a policy oxymoron. And with the U.S. government supporting these corrupt actors by way of cash deliveries, among numerous other benefits, the messages sent to corrupt Afghan officials were at best mixed. Policymakers should avoid overemphasizing marginal anticorruption

programs as offsets when most engagements with corrupt governments cut in favor of their abuses.

Implications for support to civil society organizations are similarly far-reaching. No corrupt regime can be reformed or revamped without significant demand and persistent struggle on the part of the local population. However, international government and business enablers of such regimes should not use this fact as an excuse to off-load their own responsibilities onto the shoulders of often inexperienced, vastly out-resourced, and vulnerable civil society organizations.

Autocratic governments have been lashing out at such groups with unaccustomed ferocity in recent years, especially those that obtain funding and technical assistance from abroad.[28] External support is more crucial than ever in these contexts but must be provided in smarter ways, with more attention to potential impacts on civil society organizations and actors, especially their physical safety. Such support, moreover, must be part of a holistic approach that includes reductions in donor-nation actions that enable the very regimes civil society groups are fighting.

Membership in international "clubs" such as the World Trade Organization or the European Union or participation in specialized transparency regimes, even such donor frameworks as Millennium Challenge Corporation grants, can serve as useful incentives and forcing functions for improving kleptocratic practices. These groups often include requirements that provide tools for civil society's opposition to ongoing corruption.

However, when standards for entry are too lax, membership in such organizations can have the opposite of their intended effect. They may serve as a fig leaf, conveying a seal of international approval for unacceptable practices. In the worst cases, they open the door to increased financial support without preventing capture of the money by corrupt governing networks.

Implications for business actors include a more nuanced cost-benefit analyses for investing in such environments altogether. These assessments should include the likelihood of reputational risk, as consumers and employees pay increasing attention to the conditions under which goods are produced.

Applying this framework can help businesses identify sectors or partners less central to kleptocratic functioning or avoid inputs, logistics, or markets over which corrupt government networks have monopoly control and can thus block access in return for payment. It will also help predict increasingly sophisticated versions of pay-to-play bribery demands, which will inevitably fall under the purview of legislation such as the U.S. Foreign Corrupt Practices Act as such laws evolve.

Perhaps most importantly, a better understanding of the impact of severe corruption will raise the stakes for those businesses that typically act as external enablers to acutely corrupt systems—such as accountants, legal service providers, and especially banks—and highlight the long-term costs of playing this role.

The interaction between new manifestations of acute government corruption, especially visible since the mid-1990s, and public reactions, which are also taking new forms, is still insufficiently understood. But the role of corruption in catalyzing significant international security hazards is now undeniable. Careful study of its ramifications in specific contexts can help policymakers make better choices among a broader array of options for engagement to reduce the likelihood of open conflict or crisis.

Appendix: Recommended Approaches

Below is a nonexhaustive list of approaches to highly corrupt countries that are available to different private- and public-sector actors. Some can be incorporated into routine operating procedures. Others, used selectively and in combination as appropriate, constitute elements of a targeted strategy to help curb acute corruption in particular countries—in concert with local civil society.

Chief of State

- Enunciate a clear anticorruption policy by means of an executive order, presidential memorandum, or similar instrument, directing all agencies to apply relevant authorities and resources to the effort.
- Consider acute corruption when deciding whether to engage in publicized, status-enhancing face-to-face meetings with a foreign chief of state or bestow public accolades.

Intelligence

- Include corruption in annual assessments of security risks compiled by intelligence communities.
- Increase the number of personnel assigned to study the structure, manning, operating procedures, favored revenue streams, facilitators, protection mechanisms, patterns of life, and vulnerabilities of corrupt governing networks.
- Design new collection requirements to fill knowledge gaps regarding corrupt networks, including the ways in which Western governments and private-sector actors enable such systems, and focus on financial intelligence.
- Establish "fusion cells," bringing different types of specialized expertise to bear collectively on the problem.
- Subject intelligence agency payments to key members of corrupt governing networks to high-level interagency debate.

Diplomacy

- Consider a foreign official's kleptocratic practices when shaping engagements with him or her. Avoid inadvertently glorifying those practices through publicized high-level interactions or overly close personal relationships.

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- Include corruption in talking points for bilateral meetings, but avoid threats of repercussions if political will to follow up is lacking. Where Western countries possess concrete leverage, actions speak louder than words. In other situations, diplomatic imprimatur is highly desired by corrupt leaders.
- Avoid using corrupt networks' cutouts for everyday business.
- Exercise more discretion regarding the officials who will be sent on high-status training and cooperation opportunities.
- Make use of expansive visa-denial authorities.
- Provide expedited visas and other facilities to bona fide whistle-blowers and justice professionals legitimately seeking to address the problem.
- Take corruption (and corrupt networks' preferred revenue streams) into account when promoting bilateral trade and investment. Western businesses take their cues from their governments and should not be encouraged into a facilitating relationship with a severely corrupt government.
- Encourage the implementation and monitoring of relevant multilateral agreements and the tightening of standards for entry as appropriate.
- Press for more stringent banking regulations in new money-laundering and asset-sheltering safe havens, such as the United Arab Emirates, Singapore, Africa, and Central Asia.

Financial System

- Make full use of authorities for enhanced monitoring of financial transactions by money-laundering suspects and politically exposed persons.
- Consider establishing a new, more stringent deposit thresholds for automatic referral for investigation.
- Apply current sanctions programs (such as those for foreign narcotics kingpins or transnational organized crime) to kleptocratic officials whose activities fall within these categories.
- Enact, by executive order or legislation, a new sanctions regime aimed at kleptocratic government officials. Language can be adapted from the 2014 Ukraine Support Act (H.R. 4278) that imposed sanctions on Russian individuals.
- Provide investigative personnel and enhanced technical assistance for asset-recovery cases, especially for countries that are transitioning away from kleptocratic governance—like the twelve-person "rapid response" team created by the U.S. Federal Bureau of Investigation (FBI) in April 2014.

- Develop clear criteria to define politically exposed persons and require enhanced monitoring of their assets in U.S. banks. Monitor compliance with those requirements.
- Pressure developing countries to reform their banking systems holistically rather than merely requiring higher capital reserves.

Law Enforcement

- Increase incentives for investigators (the FBI and its equivalents) working on white-collar crime and financial investigations.
- Target prosecutions under anti-bribery legislation and the Racketeer Influenced and Corrupt Organizations Act (or their equivalents) at businesses suspected of bribing a corrupt official who is part of a network under policy focus.
- Use plea bargains and other incentives to gain a broader picture of bribe takers, network operations, and other bribe payers.
- Prosecute dual nationals under Western national law.
- Enhance and more carefully target prosecutions under civil law against assets connected to a crime (in rem forfeiture). Target current, not just former, ruling kleptocrats, and include prestigious real-estate or other property held in Western countries.
- Build a routine (interagency) mechanism for determining the best way to repatriate seized assets, taking the current nature of the relevant government into account.
- Push for reinforced searches and seizures of cash above the legal limit in airports that serve as hubs, such as Delhi, Dubai, or Frankfurt.
- Provide robust legal assistance to law enforcement professionals in transitioning nations.
- Expand victims' rights to sue in third-party jurisdictions.

Development Assistance

- Cease to consider corruption as primarily a technical problem to be addressed by means of capacity building or equipment support.
- Apply personnel to the task of understanding, on a country-by-country basis, how development assistance, including infrastructure loans and Millennium Challenge assistance, becomes a "rent" captured by kleptocratic ruling networks. The use of government-organized nongovernmental organizations (GONGOs) and other cutouts, pervasive contract padding, and other financial irregularities should be assessed upstream of decisions to provide aid or loans.

- Change incentive structures within aid organizations that exclusively reward the spending of money so that equal consideration can be given to the policy and development advantages of *not* providing aid as to those of providing aid in a severely corrupt environment.
- Facilitate collection of information on financial irregularities and other misuses of development assistance through systematic guidance to project managers, standard reporting forms, and whistle-blower facilitation, protection, and rewards.
- Write firm "zero-tolerance" clauses into development assistance contracts regarding financial irregularities that provide for repayment of aid money in case of violation.
- Systematically suspend aid payments when suspicion of financial irregularity or misuse warrants investigation.
- Direct officials who manage aid, by means of standard contracting guidelines, to avoid implementing partners whose beneficial owners are members of corruption networks. Conduct rigorous cost-benefit analyses when doing so is impossible.
- Include independent monitoring and evaluation in every aid contract. Include the budget line in the program funds, not the overhead.
- Expand the mandates of inspectors general to include systematic oversight for financial irregularities, along the lines of Norway's financial control units or the U.S. offices of special inspectors general for reconstruction in Afghanistan and Iraq. Increase staff as necessary.
- Provide anticorruption capacity-building and technical support only to those governments that show a bona fide desire to combat the problem.
- In kleptocratic environments, provide anticorruption support to civil society organizations (including professional or sectoral organizations as appropriate) that are inclined and structured to take on the problem.
- Support measures to increase transparency, especially in countries with robust civil society anticorruption efforts. But cease thinking of transparency as a synonym for accountability and assuming that transparency measures in and of themselves lead to accountability.

Security Sector

- Train military units that will be forward deployed (especially special operations teams) to consider the potential downstream effects of inadvertently enabling kleptocratic networks when they establish themselves on foreign soil or participate in train and assist missions.

- Instruct military trainers to observe, report on, and intervene in their trainees' corrupt practices.
- Assign military intelligence assets to the task of understanding the linkages and practices of host-nation partners.
- Provide guidance to contracting officers to avoid local security companies or service providers whose beneficial owners are members of corrupt networks.
- Take corruption into consideration when awarding and shaping military assistance and cooperation packages and when designing and implementing disarmament, demobilization, and reintegration programs for foreign militias.
- In cases where the Western chief of defense effectively serves as chief diplomat (especially countries formally or effectively run by militaries, such as Pakistan or Egypt), expand considerations beyond the usual military-to-military relationship boundaries, using tools from the "intelligence" and "diplomacy" sections above.

Multilateral Initiatives

- Make use of relevant approaches from the "development assistance" section above.
- Apply transparency guidelines to grants, making information on their purpose and effective expenditure available to host-nation populations.
- Enforce and if necessary tighten reporting requirements for the financial services industry and land registries under such programs as the Extractive Industries Transparency Initiative.
- Police enforcement of such anticorruption conventions as the Organization for Economic Cooperation and Development's anti-bribery convention or the United Nation's anticorruption convention.
- Consider establishing international monitoring bodies for one or more such conventions, along the lines of the Organization for the Prohibition of Chemical Weapons.
- Ensure high bars to entry, so that multinational institutions and initiatives do not serve to legitimize acutely corrupt governments and the multinational corporations that do business with them.
- Further reduce barriers to sharing financial intelligence.
- Choose not to hold important international meetings in acutely corrupt countries.

- Place the issue of acute corruption and its various security, economic, and environmental impacts high on the agenda for important international summit meetings such as the Group of Seven.
- Consider canceling "odious debt" for formerly corrupt countries in transition.

Citizens

- Identify civil society organizations fighting corruption in their home countries and, where doing so will not endanger them, financially support or publicize these groups' work.
- Identify key Western facilitators and enablers (such as banks and law firms) and spotlight their role.
- Mount public campaigns against such enablers or multinational corporations that make significant investments in sectors that serve as key revenue streams for corrupt networks.
- Shed light on the ways corrupt governments attract foreign investment, such as by shutting down competition, deactivating local labor or environmental legislation, and forgiving taxes. Such favors also hurt Western economies by creating unfair competition.
- Publicize corrupt officials' purchases of luxury property in Western countries.
- Develop agile social media platforms to raise awareness and engage in these campaigns.
- Report bribe solicitations when seeking to invest in corrupt countries.

Notes

1 TI also publishes a yearly Global Corruption Barometer, which captures local public opinion on corruption and integrity reports, filed by each of TI's national chapters. See "In Detail: Global Corruption Barometer 2013," www.transparency.org/gcb2013/in_detail.

2 Hannes Baumann, "The Mood of Capital: Corruption Perception in Ben Ali's Tunisia," lecture delivered at Georgetown University, Tuesday, February 19, 2014, http://vimeo.com/87583233. Baumann argues that Transparency International's Corruption Perceptions Index privileges the views of the business elite over the perceptions of academics, policymakers, and non-elites. This source bias can create a dissonance between TI's score and the reality of corruption in a country because "business elites can tolerate corruption as long as capital accumulation is not unduly disturbed. Hence, they report a relatively low corruption score to the surveys that form the basis of the Transparency International index." The 2010/2011 WEF survey that is weighted heavily in the Corruption Perceptions Index contracted a firm run by a Ben Ali affiliate, likely further distorting Tunisia's score on the index. A 2012 version of his argument can be found here: http://brismes2012.files.wordpress.com/2012/02/hannes-baumann-what-tunisias-revolution-tells-us-about-corruption.pdf.

3 See Transparency International, "Corruption Perceptions Index 2009," www.transparency.org/research/cpi/cpi_2009. See also Beatrice Hibou, *La Force de L'Obeissance: Economie Politique de la Repression en Tunisie* (Paris: La Decouverte, 2006), English edition: *The Force of Obedience: The Political Economy of Repression in Tunisia* (Cambridge: Polity Press, 2011).

4 See for example, Swedish public television's Mission: Investigation Documentaries on Teliasonera in Uzbekistan. "Teliasonera in Million Dollar Deal With Dictatorship," September, 19, 2012, www.svt.se/ug/teliasonera-i-miljardaffar-med-diktatur.

5 We have deliberately chosen to sidestep a semantic concern that preoccupies many students of this issue: the distinction between "kleptocracies" and countries that are "merely" very corrupt. That distinction roughly maps to the two categories of country we discuss. A useful examination of the structures of corrupt networks is to be found in Michael Johnston, *Syndromes of Corruption* (Cambridge: Cambridge University Press, 2005). See also Mats Lundahl, "Inside the Predatory State: The Rationale, Methods, and Economic Consequences of Kleptocratic Regimes," *Nordic Journal of Political Economy* 24 (1997) for an overview of kleptocratic systems and patterns of rent extraction. Bruce Bueno de Mesquita and Alastair Smith, *The Dictator's Handbook: Why Bad Behavior Is Almost Always Good Politics* (New York: Public Affairs, 2011) examines how small ruling cliques maintain power; Robert Bates, *When Things Fell Apart: State Failure in Late Century Africa* (New York: Cambridge University Press, 2008) examines the differences between good governance and predatory governance.

6 About the release of an arrested corruption suspect in the summer of 2010, Karzai himself told ABC News "Absolutely I intervened . . . I intervened very, very

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strongly," http://abcnews.go.com/ThisWeek/week-transcript-karzai-khan-levitt/story?id=11454631&page=4.

7 Constitution of the Republic of Cameroon. art. 37. sec. 3: "The President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and for the legal department." Consequently, analysts explain that the court's hands are "chained to the back." See Peter Ateh-Afac Fossungu, *Democracy and Human Rights in Africa: The Politics of Collective Participation and Governance in Cameroon* (Mankon, Bamenda: Langaa Research & Pub. CIG, 2013), 146–53.

8 Nathan Brown, "Why Do Egyptian Courts Say the Darndest Things?" *Washington Post*, March 25, 2014.

9 Robert Coalson, "Azerbaijani President Aliyev Named Corruption's 'Person of the Year,'" Radio Free Europe Radio Liberty, January 2, 2013, www.rferl.org/content/azerbaijan-ilham-aliyev-corruption-person-of-the-year/24814209.html.

10 Both of these aspects of the functioning of Ben Ali's state are remarkably documented by Hibou in *La Force de l'Obeissance*.

11 Dominik Zaum, "Political Economies of Corruption in Fragile and Conflict-Affected States: Nuancing the Picture," U4 Brief, U4 Anti-Corruption Resource Center, September 2013, 4.

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13 See Sarah Chayes and Mokhtar Awad, "Bahrain's Unequal Distribution," Carnegie Endowment for International Peace, February 13, 2013, http://carnegieendowment.org/2013/02/13/bahrain-unequal-distribution/fm9u.

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16 Dan Jordan Smith, *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria* (Princeton, N.J.: Princeton University Press, 2007), 102–104.

17 See UNODC, "Corruption in Afghanistan: Recent Patterns and Trends," December 2012, www.unodc.org/documents/frontpage/Corruption_in_Afghanistan_FINAL.pdf. See also Integrity Watch Afghanistan, "National Corruption Survey 2014," www.iwaweb.org/ncs/_2014/executive_summary.html.

18 See for example, "Undue Diligence: How Banks Do Business With Corrupt Regimes," Global Witness, March 2009.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFF'S ANSWER TO DEFENDANT BOBBIE BAYLESS FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6) MOTION TO DISMISS

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I. NATURE AND STAGE OF THE PROCEEDING

1. This is a public interest lawsuit alleging a conspiracy involving public corruption as it relates to the legitimate administration of justice.

2. Plaintiffs in the above titled action, brought 18 U.S.C. §1964(c) Racketeer Influenced Corrupt Organization and other claims (RICO, 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d)) both individually and as private attorneys general on behalf of the public trust on July 5, 2016 in the Southern District of Texas.

3. On September 7, 2016, Pro se Defendant, Bobbie Bayless, filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt #23).

4. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a supplement to the RICO Complaint filed July 5, 2016 in the above titled Court. Plaintiffs hereby incorporate the Addendum of Memorandum (Dkt 26) by reference as if fully restated herein.

II. CONTEXTUAL SUMMARY

5. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston Texas. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl, Carole, and Defendants Amy and Anita Brunsting, and also includes the

remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al., per stirpes.

6. Plaintiff Curtis is not an heir to any estate, has no inheritance expectancy, is not party to any estate litigation and does not believe there is an estate.

7. This racketeering lawsuit is a culmination of four and one half years of multi-jurisdictional litigation that began in the federal court as a simple breach of fiduciary under diversity jurisdiction seeking accounting and fiduciary disclosures. During that time the underlying causes for the lawsuits have revealed themselves as the product of an organized symphony of actors combined in an illicit color of law wealth redistribution enterprise operating out of Harris County Probate Courts and thus the matter properly returns to the federal court under federal question.

According to the public record:

8. In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their 5 primary issue, as well as for their remaindermen grandchildren and great grandchildren. (Exhibit A1 attached E1-E61)

9. The Brunsting's restated their Trust in 2005 (Exhibit A2 attached E62-E148) and amended the restatement in 2007 (Exhibit A3 attached E149-E151).

10. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

11. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and divided its assets among an irrevocable decedent's trust and a revocable survivor's trust.

12. Nelva Brunsting passed on November 11, 2011 and a number of illicit instrument were drafted after Elmer Brunsting became incompetent and after he passed, claiming changes had been made that could not be made under the law of the trust. The 8/25/2010 QBD (Dkt 26-14,

(E740-E776)[1] (also called the extortion instrument) and the several appointments of successor trustee are just such instruments (Dkt 26-14 E497-E1187)[2]

13. The acting trustees, Anita and Amy Brunsting, refused to answer, account or provide disclosures and after two unsuccessful demand letters[3] advising Defendants Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit.

III. A HISTORY OF THE LITIGATION

14. Candace Curtis v Anita and Amy Brunsting (4:12-cv-592) began in the federal court in the Southern District of Texas on February 27, 2012, was dismissed under the Probate exception to federal diversity jurisdiction March 8, 2012 and Curtis filed timely notice of appeal.

15. On March 9, 2012 Defendant Bayless filed a Petition to take depositions before suit in the Harris County District Court.

16. On January 9, 2013 the Fifth Circuit issued a unanimous opinion with Order for Reverse and Remand published *Curtis v Brunsting 704 F.3d 406*. (Exhibit A4 attached E152-E158)

17. On January 29, 2013 Defendant Bobbie Bayless filed a suit in the Harris County District Court against Defendants Vacek & Freed, in the name of the "estate of Nelva Brunsting". (Exhibit A5 attached E159-178)

18. In late 2013 Plaintiff Curtis enlisted the assistance of Houston Attorney Jason Ostrom.

19. Immediately upon appearing as Plaintiff Curtis' representative in the federal lawsuit, Defendant Jason Ostrom (Ostrom) arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis' lawsuit with that of her brother Plaintiff Carl Brunsting, allegedly to afford complete relief to the parties. (Dkt 26-1 E1-E4)

---

[1] This instrument was the subject of Defendant Amy and Anita Brunsting's No-evidence Motion for Partial Summary Judgment (Dkt 26-5 E20-E28, Dkt 26-11 E406-E452 Curtis answer and demand to produce evidence)

[2] Curtis 20 page Motion for partial summary and declaratory judgment with numerous exhibits that remains unanswered by Defendants Anita and Amy Brunsting.

[3] Case 4:12-592 Exhibits 17and 20 in the original federal complaint at pages 67-68, and 71-79 respectively.

20. Thus Ostrom amended Curtis federal complaint to add Carl Henry Brunsting as an Involuntary Plaintiff in order to pollute diversity so he could perfect a remand to state court to consolidate federal Plaintiff Curtis with state court Plaintiff Carl Brunsting.

21. However, Carl Brunsting's counsel, Defendant Bobbie Bayless, named federal plaintiff Curtis a Defendant in that suit. Defendant Ostrom et al., thereafter misplaced "Plaintiff Curtis" and "Curtis v Brunsting" in the probate court record under the heading of the estate of Nelva Brunsting as herein after more fully reappears.

IV. STATEMENT OF THE ISSUES

22. Bayless argues Plaintiffs have failed to state a claim and seeks to dismiss pursuant to Federal Rule 12(b)(6).

> *Defendant Bayless claims:*
>
> *2. This case is related to a case pending in Harris County Probate Court, #4 in cause number 412249 – 401, styled Carl Henry Brunsting et al., vs. Anita Kay Brunsting et al.*
>
> *3. The allegations relating to Bayless are minimal*
>
> *4. Plaintiffs entire claim as articulated in paragraph 131 of the complaint is based on Bayless but postponement of a hearing on the motion for partial summary judgment Bayless filed in the probate proceeding on behalf of her client Carl Brunsting. That action is not wrongful and cannot support a cause of action which can be asserted by these plaintiffs under any circumstances*
>
> *5. Bayless certainly did postpone the hearing on her own motion for partial summary judgment that plaintiffs have no right to even complain about Bayless actions in representing her client, Carl Brunsting, much less to Bayless for it.*
>
> *6. Plaintiffs have not provided one single fact to support their apparent position that Bayless is a person who is engage in a pattern of racketeering activity connected to the acquisition establishment conduct or control of an enterprise and that Bayless participated in the operation or management of that enterprise.*

V. STANDARD OF REVIEW

Federal Rule 12(b)(6)

23. When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must take the facts alleged in the complaint as true and construe them in the light most favorable to the plaintiff. *Resnick v. AvMed, Inc., 693 F.3d 1317, 1321–22 (11th Cir. 2012).* To survive Rule 12(b)(6) scrutiny, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)* (quoting *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)*). "[F]acial plausibility" exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556).

24. The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is de novo , and the Court will employ the same standard as the district court. *First Am. Title Co. v. Devaugh, 480 F.3d 438, 443 (6th Cir. 2007)*; *Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club, 419 F.3d 462, 468 (6th Cir. 2005).*

VI. THE ARGUMENT

25. Candace Curtis' breach of fiduciary lawsuit against Anita and Amy Brunsting filed in the federal court on February 27, 2012, involves only the Brunsting trusts.

26. Bobbie Bayless' "estate" suit was filed in Harris County District Court January 29, 2013 alleging that Candace Kunz-Freed conspired with Anita, Amy and Carole Brunsting to improperly wrest control of the Brunsting trusts away from Trustee Nelva Brunsting. (A5)

27. On April 9, 2013, the same day Plaintiff Curtis obtained an injunction against acting trustees Anita and Amy Brunsting in the federal court (Exhibit A6 attached E179-E183 and A6-1

E184-E237), Defendant Bobbie Bayless filed suit in Harris County Probate Court alleging that Anita, Amy and Carole Brunsting conspired with District Court Defendant Candace Kunz-Freed to improperly wrest control of the Brunsting trusts away from then trustee Nelva Brunsting. (Exhibit A7 attached E238-E257)

28. In Curtis v Brunsting 704 F.3d 406, the Fifth Circuit explained the doctrine of comity by citing to the Supreme Courts' clarification of the "distinctly limited scope" of the probate exception,[4] in Marshall v Marshall 547 U.S. 289:

> *[W]e comprehend the 'interference' language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.*[5]

29. When Defendant Bobbie Bayless filed claims exclusively related to the Brunsting family of trusts under "executor of the estate of Nelva Brunsting" in Harris County District Court on January 29, 2013, she knew the Brunsting Trusts were in the custody of Honorable United States District Judge Kenneth Hoyt and that the Brunsting trust res had been in the custody of the federal court since February of 2012.

30. Bayless also knew on April 9, 2013, when she filed a lawsuit in the Harris County Probate Court, that Honorable United States District Judge Kenneth Hoyt had issued an injunction against self-proclaimed trustees Anita and Amy Brunsting earlier that very same day.

31. Not only did the Harris County District and Probate Courts lack subject matter jurisdiction over any Brunsting Trust matter under the laws of comity and the Doctrine of

[4] Id. at 310.
[5] Id. at 311–12.

Custodia legis, but Bayless also knew the wills of both Grantors bequeathed everything to the Brunsting family trust, and that the trust, as the only heir to the estate, was the only real party in interest.

32. Knowledge of the complete absence of jurisdiction is the only thing that explains the probate Court's absolute refusal to rule on any substantive issues, and the perpetual position that the Court would not act without agreement between the parties.

33. It also explains Bobby Bayless' removal of summary judgment hearings from calendar and the participation of all the Defendant lawyers in attempting to intimidate Plaintiff Curtis into thinking she would be deprived of her property rights if she did not enter into an unholy settlement agreement.

34. Apparently Bayless' theory is that trespass against the Brunsting trust during the life of Nelva Brunsting created claims belonging to the estate. However, the only heir to the estate is the trust and thus any claims of trespass against the trust are claims belonging to the cestui que and not the fiction called "estate".

35. The estate flow chart (Exhibit A8 attached E258) shows that under the plan there is no probate after the death of the first spouse, the estate plan avoids guardianship and there is no probate after the death of the second spouse.

36. The record will show Candace Freed implemented an attempt to have Grantor Nelva Brunsting declared incompetent and probate has been filed after the death of the second grantor, so apparently none of the claims made by any of these Defendants have produced the promised fruit.

37. The record will also show that the entire controversy is traceable to instruments drafted and notarized by Candace Freed at the request of Anita Brunsting. (Dkt 26-11)

38. On June 26, 2015 Defendants filed a No-Evidence motion for partial summary judgement (Dkt 26-5 E20-E28) claiming Plaintiffs could produce no evidence that the 8/25/2010 QBD (extortion instrument) was invalid.

39. On July 13, 2015 Attorneys for Plaintiff Carl Brunsting and the Defendants filed notices setting hearing on their dispositive motions for August 3, 2015. (Dkt 26-10)

40. Also on July 13, 2015 Plaintiff Curtis filed an answer to Defendants' no-evidence motion with a motion and demand to produce evidence, demanding Defendants produce the archetype of the alleged 8/25/2010 QBD and qualify it as evidence. Defendants cannot produce the 8/25/2010 QBD instrument and qualify it as evidence and have steadfastly refused to do so for more than four years. (Dkt 26-4 & 26-11)

VII. THE PROCEEDINGS ARE IN STASIS BY DESIGN

41. In reviewing the original lawsuit the Fifth Circuit could clearly see that Curtis v Brunsting is a lawsuit related only to the Brunsting Trusts.

42. However, once having removed the federal litigation to the state probate court Defendant, Jason Ostrom, immediately abandoned Curtis v Brunsting and adopted the heading of the estate of Nelva Brunsting. (Exhibit A9 attached E259-E266).

43. What happened to Curtis v Brunsting? Once in the probate court Defendants Bayless, Ostrom, Payne-Smith, Butts, Featherston and Spielman concocted a scheme to disappear Curtis v Brunsting as "estate of Nelva Brunsting" (Exhibits A10 attached E267-E271)

44. The problem is that Bayless, the attorney for Carl Brunsting, named federal Plaintiff Curtis a defendant in that suit.

45. Federal Plaintiff Curtis, having filed her federal law suit 11 months earlier than Bayless' District Court suit and 14 months earlier than Bayless' probate court suit disappeared in the probate record after the remand to state probate court.

46. Thus federal Plaintiff Curtis became nothing but a defendant in Bayless' probate law suit fantasy and just vanished like the docket control order, summary judgement and trial. Was there was a fire?

47. There is no docket control order (Exhibit A11 attached E272-E273) and no trial date in place in the trust litigation or in any related matter pending in the Harris County Probate or District Courts and no substantive determinations on any issue have been entered in those courts.

48. Rather than set dispositive motions for hearing on Plaintiff Curtis' request, Plaintiff was threatened with deprivation of property by Defendants Anita and Amy Brunsting's counsel, Defendants Neal Spielman and Stephen Mendel, and threatened by a court with no jurisdiction with being ordered to a second mediation with Defendants who have established an intractable record of having no intentions of honoring any legal or moral obligations.

49. All of these gymnastics were for the illicit purpose of concealing the total absence of jurisdiction while getting attorney fees paid from the Brunsting money cow trust. (Dkt 26-16 E1189-E1242)

VIII. THE CONDUCT OF THESE DEFENDANTS IS HEINOUS

50. Carl Brunsting fell ill and was in a coma in July of 2010 and by August 25, 2010 the heinous extortion instrument was produced with the sole intention of seizing the Brunsting trust wealth and threatening the victims of that theft with total deprivation of property rights for any effort of the beneficiary victims to protect their beneficial interests by seeking judicial remedy.

51. According to the brutal deposition Carl Brunsting was subjected to in the state District Court, Carl and his wife Drina paid Bobbie Bayless more than a quarter of a million dollars and Bayless stabbed them in the back at the finish line after taking thier money for poser advocacy in a court with no authority to provide any relief, of any kind, at any time!

IX. CONCLUSION

52. Each of these Defendants insists this RICO lawsuit is about estate litigation and inheritance expectancies. Plaintiff Curtis is not an heir to any estate and has no inheritance expectancy. Plaintiff Curtis became a "cestui que" of an inter vivos trust in 1996 when it was created.

53. Defendants claim to be trust and estate plan professionals and should know a cestui que is a person with a beneficial interest in a trust res a.k.a. a beneficiary. When one of several cestui ques of a trust dies the share of the res previously belonging to the decedent remains property of the trust and is managed or distributed as per the terms of the trust and do not become assets belonging to a fiction called an "estate", which is the whole purpose behind creating an inter vivos trust.

54. In the case in point the only heir to any estate is "the trust" therefore the cestui que is the real party in interest and not the estate. All right of claim is within the province of the beneficiary or the trustee as the case may be, but there is no right of any claims in any estate.

55. Bobbie Bayless had no business bringing trust related claims in probate on behalf of Carl Brunsting in his individual capacity, as he is not an heir to the estate, nor did Carl have standing as executor of the estate to bring claims relating to the trust in the probate court.

56. This lawsuit is about racketeering and a concerted effort to redistribute the Brunsting trust assets amongst a cabal of attorneys under an estate lawsuit litigation pretext.

57. Bayless dogged the federal litigation at every step and knew full well when she filed her trust related claims as estate claims that the Brunsting family of trusts were in the custody of a federal court and that no court could assume in rem jurisdiction over a res in the custody of another court, Curtis v Brunsting 704 F.3d 406, 409-410.

58. When Defendant Bayless filed her trust related claims in the state Probate Court on April 9, 2013 she knew that similar claims were before two other courts, that only one court could have custody of the res.

X. RELIEF REQUESTED

59. Defendants are before this Honorable Court because of a concerted effort to game the judicial process and while knowingly and intentionally pretending jurisdiction, these Defendants attempted to force resolution of the underlying controversy by intimidation induced agreement, rather than on the merits. The usual course appears to be ruling against victims whose claims have been undermined by their own counsel, but with the knowing want of jurisdiction here the normal ruse was unavailable.

60. Plaintiff Curtis is a property owner who wants possession, control, use and enjoyment of her property and Defendants seek to deprive her of that property, avoid the law and avoid substantive resolution on the merits for their own private purposes.

61. Plaintiff Munson is a member of the body politic of this country and like Plaintiff Curtis and the rest of the nation, Munson has a common property interest in legitimate governance and the honest administration of Justice.

62. There is a public policy preference in favor of resolution on the merits. Plaintiff Curtis' demand for access to the Court and to the due process of law was obstructed and denied in the

state court and that matter is ripe for summary and declaratory judgement on the pleadings from that court.

Wherefore Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) Motion to Dismiss filed by Defendant Bobbie Bayless August 7, 2016, (Dkt 23).

Respectfully submitted,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 27th day of September, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendant Bobbie Bayless in the above styled cause on August 7, 2016 (Document 23) should be Denied.

It is SO ORDERED

_____
Date

_____
The Honorable Alfred H Bennet
United Stated District Judge

17-20360.2074

ATTACHED EXHIBITS

A1 - Original 1996 Trust	E1-E61
A2 - 2005 Restatement	E62-E148
A3 - 2007 Amendment	E149-E151
A4 - 2013-01-09 Curtis v. Brunsting_ 704 F.3d 406_Lexis	E152-E158
A5 2013-01-29 District Court Complaint against Freed	E159-E178
A6 - 2013-04-09 Preliminary Federal Injunction	E179-183
A6-1 - 2013-04-09 Injunction Transcript-Hoyt	E184-E237
A7 - 2013-04-09 PBT-2013-115617 Bobbies Original Petition	E238-E257
A8 - Brunsting Trust Flow Chart	E258
A9 - 2015-02-12015-02-12 Ostrom 2nd amended complaint	E259-E266
A10 - 2015-03-09 Consolidation Order	E267-E271
A11 - 2015-02-20 Docket Control Order	E272-E273

THE

BRUNSTING FAMILY

LIVING TRUST

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THE BRUNSTING FAMILY LIVING TRUST

Article I

The Founding of Our Family Living Trust

Section A. Our Declaration of Trust

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY

Second, CARL HENRY BRUNSTING

Third, AMY RUTH TSCHIRHART

A successor Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death or disability. Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the ____ day of _____, 19_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits

which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased

Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

a. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

b. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

c. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan", our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only. Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living

descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any

amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provided otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the

parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the

Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when

the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit by the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when

the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity

serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals,

other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: October 10, 1996

_____
ELMER H. BRUNSTING, Founder

_____
NELVA E. BRUNSTING, Founder

_____
ELMER H. BRUNSTING, Trustee

_____
NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On October 10, 1996, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

_____
Notary Public, State of Texas

THE RESTATEMENT OF

THE BRUNSTING FAMILY

LIVING TRUST

Prepared By

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THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

Article I

Our Family Living Trust

Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

Article II

Transfers of Assets to Our Trust

Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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Article III

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.

The 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.

Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

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Article IV

Our Trustees

Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Section C. No Bond is Required of Our Trustees

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

Section D. Resignation or Removal of Our Trustees

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

Section E. Affidavit of Authority to Act

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The 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 of a successor's authority to serve and act as the Trustee of the trust.

Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

Section I. Delegation of Authority

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

Section J. Successor Corporate Trustees

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

Section K. Partial and Final Distributions

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

Article V

Insurance Policies and Retirement Plans

Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

4. Payor's Liability

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

1. Minimum Distribution

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

2. Distribution Restrictions

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

3. Exclusion of Older Adopted "Descendants"

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

4. Payment of Estate Taxes of Plan Participant

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

5. Delivery of Trust to Plan Administrator

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

6. Distribution to the Beneficiaries

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

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of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

7. Distribution of More Than the Minimum Distribution

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

Article VI

For So Long As We Both Shall Live

Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

Section C. Income Tax Matters

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

Section D. Residence Homestead

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

Article VII

Upon the Death of One of Us

Section A. Settlement of Affairs

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

1. Deceased Founder's Probate Estate

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

2. Exempt Property Excluded

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

3. Apportionment of Payments

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

Section B. Division and Distribution of Trust Property

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

1. Creation of the Survivor's Trust

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

a. Numerator of the Fractional Share

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

b. Denominator of the Fractional Share

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

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2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

Section F. Allocation of Trust Property

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

Section G. Distributions from Retirement Plan to the Survivor's Trust

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

1. Form of Distribution

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

Article VIII

Administration of the Survivor's Trust

Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

1. Survivor's Share One

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

2. Survivor's Share Two

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

2. The Surviving Founder's Right to Withdraw Principal

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

3. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

4. The Surviving Founder's General Power of Appointment

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

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3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

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The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

2. Redemption of Treasury Bonds

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

3. Coordination with the Personal Representative

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

a. Authorized Payments

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

b. Purchase of Assets and Loans

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

c. Distributions from the Personal Representative

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

4. Trustee's Authority to Make Tax Elections

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

a. Alternate Valuation Date

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

b. Deduction of Administration Expenses

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

c. Taxes and Returns

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

Section E. Subsequent Administration of the Survivor's Trust

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

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Article IX

Administration of the Decedent's Trust

Section A. Use of Income and Principal

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

Section B. Guidelines for All Distributions

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

Section C. Guidelines for Discretionary Distributions

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

Section D. Termination of the Decedent's Trust

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

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Article X

Upon the Death of the Survivor of Us

Section A. Our Beneficiaries

Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust, all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

Beneficiary	Share
CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Section B. Distribution to our Beneficiaries

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

Section C. Administration of the Share of a Descendant of a Deceased Beneficiary

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section D. Subsequent Children

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

Section E. Guidelines for Discretionary Distributions

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

Section F. Guidelines for All Distributions

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

Section G. Ultimate Distribution

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

Beneficiary	Share%
CENTRAL COLLEGE OF IOWA Pella, Iowa	100%

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

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Article XI

Protection of Beneficial Interests

Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

Section D. Our Trustee's Authority to Keep Property in Trust

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

1. Distributions of Trust Income and Principal

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. Termination and Ultimate Distribution

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

Section E. Application to Founders

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

Article XII

Our Trustees' Powers and Authority

Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

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Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

Personal Residence and Furnishings of Personal Residence

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

Power to Enter Into or Continue Business Activities

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

Banking Authority

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

Corporate Activities

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

Agricultural Powers

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

Real Estate

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

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Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

Transactions Between the Trustee and Our Personal Representatives

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

Commingling Trust Estates

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

Addition of Accumulated Income to Principal

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

Section D. Apportionment of Receipts and Expenses Between Income and Principal

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

Section E. Records, Books of Account and Reports

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

Section F. Trustee's Liability

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

Section G. Duty of Third Parties Dealing with Trustee

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

Section H. Division and Distribution of Trust Estate

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

Section I. Life Insurance

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

Section J. Insured Trustee's Authority

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

Section K. Estimated Income Tax Payment Allocation

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

Section L. Merger of Trusts

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

Section M. Termination and Distribution of Small Trust

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

Section N. Elimination of Duty to Create Identical Trusts

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

Section O. Powers of Trustee Subsequent to an Event of Termination

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

Section P. Requesting Financial Information of Trust Beneficiaries

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

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newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

Article XIII

Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

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4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

Article XIV

Miscellaneous Matters

Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

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Section C. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

Section D. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

Section E. Dissolution of Our Marriage

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

Section F. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

Section G. Survival

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

Section H. Simultaneous Death

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

Section I. Changing the Trust Situs

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

Section J. Construction

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

Section K. Headings of Articles, Sections and Paragraphs

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

Section L. Notices

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section M. Delivery

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

Section N. Duplicate Originals

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

Section O. Severability

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

Section P. Gender, Plural Usage

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

Section Q. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

Section R. Generation Skipping Transfers

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

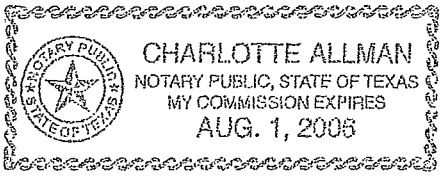
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas



14-7

Exhibit 8

The 2007 Amendment to the Brunsting Family Trust

FIRST AMENDMENT TO THE RESTATEMENT TO
THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

ELMER H. BRUNSTING,
Founder and Trustee

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

EXHIBIT "A"

Article IV

Our Trustees

Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

Positive
As of: September 23, 2016 1:02 PM EDT

Curtis v. Brunsting

United States Court of Appeals for the Fifth Circuit

January 9, 2013, Filed

No. 12-20164

Reporter
704 F.3d 406; 2013 U.S. App. LEXIS 524; 2013 WL 104918

CANDACE LOUISE CURTIS, Plaintiff-Appellant v. ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING, Defendants-Appellees

Prior History: [1]** Appeal from the United States District Court for the Southern District of Texas.

Core Terms

probate, federal court, custody, the will, decedent's, federal district court, probate court, state court, in rem jurisdiction, probate proceeding, district court, subject-matter

Case Summary

Procedural Posture

Plaintiff, the beneficiary of a trust, sued defendant co-trustees of the trust, for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. The United States District Court for the Southern District of Texas dismissed the case for lack of subject matter jurisdiction, concluding that the case fell within the probate exception to federal diversity jurisdiction. The beneficiary appealed.

Overview

The court found that the case was outside the scope of the probate exception under the first step of the inquiry because the trust was not property within the custody of the probate court. Because the assets in a living or inter vivos trust were not property of the estate at the time of decedent's death, having been transferred to the trust years before, the trust was not in the custody of the probate court and as such the probate exception was inapplicable to disputes concerning administration of the trust. The record also indicated that there would be no probate of the trust's assets upon the death of the surviving spouse. Finding no evidence that the trust was subject to the ongoing probate proceedings, the case fell outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

Outcome

The district court's dismissal of the case was reversed, and the case was remanded for further proceedings.

LexisNexisÈ Headnotes

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Limited Jurisdiction

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1 Appellate courts review de novo a district court's dismissal for lack of subject-matter jurisdiction.

Estate, Gift & Trust Law > ... > Probate Proceedings > Jurisdiction > Diversity Jurisdiction Exceptions

HN2 Although a federal court has no jurisdiction to probate a will or administer an estate, the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding. Federal courts of equity have jurisdiction to entertain suits in favor of creditors, legatees and heirs and other claimants against a decedent's estate to establish their claims so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction over the probate or control of the property in the custody of the state court. Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.

Estate, Gift & Trust Law > ... > Probate Proceedings > Jurisdiction > Diversity Jurisdiction Exceptions

HN3 The U.S. Supreme Court has clarified the "distinctly limited scope" of the probate exception, explaining: when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction. The federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: The claimant seeks an in personam judgment against the defendant, not

the probate or annulment of a will. Nor does she seek to reach a res in custody of a state court. The probate exception only bars a federal district court from (1) probating or annulling a will or (2) seeking to reach a res in custody of a state court by endeavoring to dispose of such property.

Estate, Gift & Trust Law > ... > Probate Proceedings > Jurisdiction > Diversity Jurisdiction Exceptions

HN4 To determine whether the probate exception deprives a federal court of jurisdiction, precedent requires 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. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction.

Estate, Gift & Trust Law > ... > Probate Proceedings > Jurisdiction > Diversity Jurisdiction Exceptions

HN5 As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise in rem jurisdiction over a res in the custody of another court.

Estate, Gift & Trust Law > Estate Administration > Nonprobate Transfers > Living Trusts

Estate, Gift & Trust Law > ... > Probate Proceedings > Jurisdiction > Diversity Jurisdiction Exceptions

HN6 Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate. In other words, because 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.

Estate, Gift & Trust Law > Estate Administration > Nonprobate Transfers > Living Trusts

HN7 Any property held in a revocable living trust is not considered a probate asset. Avoidance of probate perhaps is the most publicized advantage of the revocable living trust. Assets in a living trust are not subject to probate administration.

Counsel: CANDACE LOUISE CURTIS, Plaintiff - Appellant, Pro se, Martinez, CA.

For ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, Defendants - Appellees: George William Vie, III, Mills Shirley, L.L.P., Houston, TX; Bernard Lilse Mathews, III, Green & Mathews, L.L.P., Houston, TX.

Judges: Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

Opinion by: PATRICK E. HIGGINBOTHAM

Opinion

[*407] PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subjectmatter jurisdiction in the wake of the Supreme Court's decision in *Marshall v. Marshall*.[1] The Plaintiff contends that, under *Marshall*, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

I.

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing **[**2]** that all property in each estate is devised and bequeathed to the Trust.[2] Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis ("Curtis") filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively "the Defendants") based on diversity **[*408]** jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional **[**3]** distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against

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[1] *547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006)*.

[2] The signed copies of the Brunstings' Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.

"wasting the estate," and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis's application for a temporary restraining order and injunction because the Defendants had not been served with process. In the order, the district court judged noted that it "appears that the court lacks subject matter jurisdiction over the claim(s) asserted." On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants' contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a *sua sponte* order dismissing the case for lack of subject matter jurisdiction. **[**4]** In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

II.

HN1 This Court reviews *de novo* a district court's dismissal for lack of subject-matter jurisdiction.[3]

III.

HN2 Although a federal court "has no jurisdiction to probate a will or administer an estate,"[4] in *Markham v. Allen*, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

> [F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heris' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction over the probate or control of the property in the custody of the state court.
>
> Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake **[**5]** to

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[3] *Borden v. Allstate Ins. Co., 589 F.3d 168, 170 (5th Cir. 2009)*.

[4] *Markham v. Allen, 326 U.S. 490, 494, 66 S. Ct. 296, 90 L. Ed. 256 (1946)*.

> interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.[5]

[*409] Sixty years later, in *Marshall v. Marshall*, the Supreme Court expressed concern with lower courts' interpretation of *Markham*, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."[6] Thus, ***HN3*** the Supreme Court clarified the "distinctly limited scope" of the probate exception,[7] explaining:

> [W]e comprehend the 'interference' language in *Markham* as essentially a reiteration of the guiding principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does **[**6]** not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.[8]

The *Marshall* Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant] seeks an *in personam* judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a *res* in custody of a state court."[9] After *Marshall*, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) "seek[ing] to reach a *res* in custody of a state court" by "endeavoring to dispose of [such] property."[10]

As we see it, ***HN4*** to determine whether the probate exception deprives a federal court of jurisdiction, *Marshall* requires 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. If the **[**7]** answer to both inquiries is yes, then the probate exception precludes the federal

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[5] *Id.* (internal citations omitted).

[6] *547 U.S. at 311*.

[7] *Id. at 310*.

[8] *Id. at 311-12*.

[9] *Id. at 312* (internal citations omitted).

[10] *Id. at 312-13*.

district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

HN5 As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise *in rem* jurisdiction over a res in the custody of another court. Both of the Brunstings' Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.[11] However, nothing suggests that the Texas probate court currently has custody or *in rem* jurisdiction over the Trust. It likely does not. ***HN6*** Assets placed in an inter vivos trust generally avoid probate, since **[*410]** such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate.[12] In other words, because 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 **[**8]** custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.[13] Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

End of Document

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[11] At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.

[12] *See* 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. Ä10:83 (***HN7*** "Any property held in a revocable living trust is not considered a probate asset . . . ."); 2 EST. TAX & PERS. FIN. PLAN. Ä 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust.'"); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to **[**9]** probate administration . . . .").

[13] Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.

Filed 13 January 29 P12:34
Chris Daniel - District Clerk
Harris County
ED101J017296628
By: Nelson Cuero

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER *(FOR CLERK USE ONLY)*: 2013-05455 / Court: 164 COURT *(FOR CLERK USE ONLY)*:

STYLED Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting vs. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:

Name: Bobbie G. Bayless
Email: bayless@baylessstokes.com
Address: 2931 Ferndale
Telephone: 713.522.2224
City/State/Zip: Houston, TX 77098
Fax: 713.522.2218
Signature:
State Bar No: TX - 01940600

Names of parties in case:

Plaintiff(s)/Petitioner(s):
Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting

Defendant(s)/Respondent(s):
Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC

[Attach additional page as necessary to list all parties]

Person or entity completing sheet is:

- [x] Attorney for Plaintiff/Petitioner
- [ ] *Pro Se* Plaintiff/Petitioner
- [ ] Title IV-D Agency
- [ ] Other: _____

Additional Parties in Child Support Case:

Custodial Parent: _____

Non-Custodial Parent: _____

Presumed Father: _____

2. Indicate case type, or identify the most important issue in the case *(select only 1)*:

Civil

Contract

Debt/Contract
- [x] Consumer/DTPA
- [ ] Debt/Contract
- [x] Fraud/Misrepresentation
- [ ] Other Debt/Contract: _____

Foreclosure
- [ ] Home Equity—Expedited
- [ ] Other Foreclosure
- [ ] Franchise
- [ ] Insurance
- [ ] Landlord/Tenant
- [ ] Non-Competition
- [ ] Partnership
- [ ] Other Contract: _____

Injury or Damage
- [ ] Assault/Battery
- [ ] Construction
- [ ] Defamation

Malpractice
- [ ] Accounting
- [x] Legal
- [ ] Medical
- [ ] Other Professional Liability: _____
- [ ] Motor Vehicle Accident
- [ ] Premises

Product Liability
- [ ] Asbestos/Silica
- [ ] Other Product Liability List Product: _____
- [ ] Other Injury or Damage: _____

Real Property
- [ ] Eminent Domain/ Condemnation
- [ ] Partition
- [ ] Quiet Title
- [ ] Trespass to Try Title
- [ ] Other Property: _____

Related to Criminal Matters
- [ ] Expunction
- [ ] Judgment Nisi
- [ ] Non-Disclosure
- [ ] Seizure/Forfeiture
- [ ] Writ of Habeas Corpus—Pre-indictment
- [ ] Other: _____

Employment
- [ ] Discrimination
- [ ] Retaliation
- [ ] Termination
- [ ] Workers' Compensation
- [ ] Other Employment: _____

Other Civil
- [ ] Administrative Appeal
- [ ] Antitrust/Unfair Competition
- [ ] Code Violations
- [ ] Foreign Judgment
- [ ] Intellectual Property
- [ ] Lawyer Discipline
- [ ] Perpetuate Testimony
- [ ] Securities/Stock
- [ ] Tortious Interference
- [ ] Other: _____

Family Law

Marriage Relationship
- [ ] Annulment
- [ ] Declare Marriage Void

Divorce
- [ ] With Children
- [ ] No Children

Post-judgment Actions (non-Title IV-D)
- [ ] Enforcement
- [ ] Modification—Custody
- [ ] Modification—Other

Title IV-D
- [ ] Enforcement/Modification
- [ ] Paternity
- [ ] Reciprocals (UIFSA)
- [ ] Support Order

Other Family Law
- [ ] Enforce Foreign Judgment
- [ ] Habeas Corpus
- [ ] Name Change
- [ ] Protective Order
- [ ] Removal of Disabilities of Minority
- [ ] Other: _____

Parent-Child Relationship
- [ ] Adoption/Adoption with Termination
- [ ] Child Protection
- [ ] Child Support
- [ ] Custody or Visitation
- [ ] Gestational Parenting
- [ ] Grandparent Access
- [ ] Parentage/Paternity
- [ ] Termination of Parental Rights
- [ ] Other Parent-Child: _____

Tax
- [ ] Tax Appraisal
- [ ] Tax Delinquency
- [ ] Other Tax

Probate & Mental Health

Probate/Wills/Intestate Administration
- [ ] Dependent Administration
- [ ] Independent Administration
- [ ] Other Estate Proceedings
- [ ] Guardianship—Adult
- [ ] Guardianship—Minor
- [ ] Mental Health
- [ ] Other: _____

3. Indicate procedure or remedy, if applicable *(may select more than 1)*:
- [ ] Appeal from Municipal or Justice Court
- [ ] Arbitration-related
- [ ] Attachment
- [ ] Bill of Review
- [ ] Certiorari
- [ ] Class Action
- [ ] Declaratory Judgment
- [ ] Garnishment
- [ ] Interpleader
- [ ] License
- [ ] Mandamus
- [ ] Post-judgment
- [ ] Prejudgment Remedy
- [ ] Protective Order
- [ ] Receiver
- [ ] Sequestration
- [ ] Temporary Restraining Order/Injunction
- [ ] Turnover

NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING	§	**IN THE DISTRICT COURT OF**
vs.	§	**HARRIS COUNTY, T E X A S**
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a THE VACEK LAW FIRM, PLLC	§	**164th JUDICIAL DISTRICT**

WAIVER OF CITATION AND SERVICE OF PROCESS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Authority, on this day personally appeared CORY REED, known to me and who being by me duly sworn upon oath deposed and stated as follows:

> "My name is Cory Reed. I am an attorney at Thompson Coe Cousins & Irons, LLP, counsel for Vacek & Freed, PLLC. Plaintiff has forwarded to me a copy of the Original Petition and Request for Disclosures filed in this case. By authorization of my client and pursuant to Tex. R. Civ. P. 119, I accept service of process on its behalf, with such service considered effective on January 29, 2013."

Further affiant sayeth not.

CORY REED

SUBSCRIBED AND SWORN TO BEFORE ME on this the 30th day of January, 2013, to certify which witness my hand and official seal.

Barbara Fernandez
Notary Public in and for the
State of T E X A S
Printed Name:
My Commission Expires:

BARBARA FERNANDEZ
Notary Public
STATE OF TEXAS
My Comm. Exp. Sept. 03, 2014

Filed 13 January 30 P12:04
Chris Daniel - District Clerk
Harris County
ED101J017298842
By: Wanda Chambers

NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING	§	**IN THE DISTRICT COURT OF**
vs.	§	**HARRIS COUNTY, T E X A S**
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a THE VACEK LAW FIRM, PLLC	§	**164th JUDICIAL DISTRICT**

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, Carl Henry Brunsting, Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting and files this First Amended Petition against **Defendants, Candace L. Kunz-Freed, Individually ("Freed") and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (the "Law Firm") (collectively, the "Defendants")**, and in support thereof would show the Court the following:

I.

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2]

3. Defendant Freed is an attorney licensed to practice law in the State of Texas who can be served at her principal place of business, 11777 Katy Freeway, Suite 300, Houston, Texas 77079.

4. Defendant Law Firm is a professional limited liability company formed under the laws of the State of Texas for the practice of law which can be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300, Houston, Texas 77079. Defendant Law Firm is believed to be the successor to the Law Offices of Albert E. Vacek, Jr., P.C.

5. Other parties and entities involved in the facts relevant to this petition but who are not named as defendants herein include the following:

a. The Brunsting Family Living Trust was created in 1996 by Elmer and Nelva based on the advice of the Law Firm. The trust instrument was prepared by the Law Firm. The Brunsting Family Living Trust, any amendments thereto, and the trusts created pursuant to its terms are collectively referred to herein as the "Family Trust". Plaintiff was to be the successor trustee of the Family Trust until that was changed through documents prepared by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.

b. Anita Kay Brunsting f/k/a/ Anita Kay Riley ("Anita") is Plaintiff's sister. Anita became trustee of the Family Trust through documents prepared by Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it. During that same period, Anita was named to act on Nelva's behalf in a power of attorney prepared by Defendants.

c. Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Plaintiff's sister. Amy became trustee of the Family Trust through documents prepared by

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[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it (Anita and Amy in their capacity as trustees of the Family Trust are sometimes collectively referred to herein as the "Current Trustees").

d. Carole Ann Brunsting ("Carole") is Plaintiff's sister, the party named in Nelva's health care power of attorney prepared by Defendants, and the party made a joint signatory on a bank account which received significant transfers from the Family Trust after Anita became trustee of the Family Trust. According to Carole, that arrangement was Freed's idea.

e. Candace Louise Curtis ("Candy") is Plaintiff's sister. Candy and Carl were the only beneficiaries of the Family Trust whose rights were diminished by the changes implemented by the Defendants at a time when it is believed Nelva was either misled about what she was signing, unduly influenced to sign it, or did not have the capacity to sign it.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction and venue over this case because all of the Defendants maintain their principal places of business in Harris County, Texas, and the acts and omissions giving rise to Plaintiff's claims occurred in Harris County, Texas. The damages being sought by Plaintiff exceed the minimum jurisdictional limits of the court.

7. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1), and (3) because all of the Defendants have their principal office in Harris County, Texas; Elmer and Nelva resided in Harris County, Texas; and all, or substantially all, of the acts and omissions giving rise to Plaintiff's claims occurred in Harris County, Texas.

IV. FACTUAL BACKGROUND

8. This is a case involving Defendants' negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants' actions constitute negligent misrepresentation, negligence *per se*, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of

fiduciary duty. Alternatively, a conspiracy existed between Defendants, and the Current Trustees for that unlawful purpose.

9. The Defendants assisted the Current Trustees in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva's estates and from the Family Trust. Because of the actions of the Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiff's detriment.

10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while representing Nelva, with the result being just the opposite. It is believed that Defendants not only failed to inform Nelva that they had established a relationship with the Current Trustees which put them in a conflict of interest with regard to their representation of Nelva's interests but that Defendants actually ignored that conflict of interest and their obligations to Nelva and assisted the Current Trustees in changing the terms of the Family Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. Defendants also took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss to Anita, Amy, and Carole and facilitating the loss which actually occurred.

11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what

the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things:

a. failed to address Nelva's lack of capacity to make changes to the Family Trust and her power of attorney,

b. failed to address the undue influence being exercised over Nelva by the Current Trustees,

c. planned for and prepared documents without explaining the impact of those documents to Nelva and without obtaining reasonable input directly from Nelva,

d. instead discussed changes to the terms of the Family Trust, and ultimately changes to Nelva's control over the Family Trust with the Current Trustees, with some, but not all, of Nelva's children, and to the exclusion of Nelva,

e. facilitated signatures by Nelva in circumstances which allowed there to be confusion about what was being signed and which failed to insure that Nelva signed documents with consent, with proper capacity, and with knowledge and understanding of what she was signing,

f. failed to properly advise Elmer and Nelva on the terms of the Family Trust and the proper administration of the Family Trust,

g. failed to insure that documents being prepared and arrangements being made in cooperation with the Current Trustees were not being used to improperly remove assets to the improper benefit of Anita, Amy, and Carole,

h. failed to protect Nelva's rights, both individually and as trustee of the Family Trust,

i. preferred the rights of the Current Trustees to those of Nelva and it is believed even suggested methods of undermining Nelva's rights and wishes to the Current Trustees so as to accomplish the objectives of the Current Trustees,

j. failed to refuse the representation of the Current Trustees so as to prevent a conflict of interest and failed to advise Nelva that Defendants' role in advising the Current Trustees was in direct conflict with Defendants' role as Nelva's counsel,

k. failed to take steps to inform Nelva of the objectives of the Current Trustees or to otherwise prevent those objectives,

l. failed to take steps to prevent the Current Trustees and Carole from converting assets belonging to Nelva, Elmer's estate, or the Family Trust, and even facilitated the conversion of assets, and

m. failed to require the Current Trustees to administer the Family Trust properly, in keeping with the terms of the Family Trust, and in the best interests of the beneficiaries, including Nelva.

12. Defendants' knowledge of the Nelva's lack of consent to the actions taken by Defendants is evident from, among other things, the apparent existence of documents which were not signed in Freed's presence but were made to appear as if they were, Nelva's refusal to sign documents prepared at the request of the Current Trustees, and Defendants' involvement in arranging and participating in discussions behind Nelva's back.

13. With Defendants' assistance, Nelva's power of attorney was changed, the terms of the Family Trust were changed, Nelva was ultimately removed as trustee of the Family Trust, and the Current Trustees and Carole improperly obtained control of assets belonging to Nelva, Elmer's estate, and the Family Trust of which Nelva was still a beneficiary. Thereafter, the Current Trustees and Carole were in a position to take those assets for their own benefit, and they did so, either in the form of alleged but improper expenses, improper trustee fees, other improper payments for their benefit, and unexplained and improper transfers. Once Nelva was removed as trustee of the Family Trust, the Defendants continued to claim to be representing the Current Trustees but failed to insure that the Family Trust was properly administered and that the assets of the Family Trust were properly preserved for the benefit of the beneficiaries, including Nelva.

V. ATTORNEY-CLIENT RELATIONSHIP

14. At all times material hereto, Freed was a partner, shareholder, representative, agent and/or associate attorney engaged in the practice of law at the Law Firm. All of the specific acts complained of herein are attributable to Freed's conduct while associated with the Law Firm as a

partner, agent, servant, representative and/or employee. Freed's liability and responsibility is vicarious and joint and several. Plaintiff further pleads the legal theory of *respondeat superior* as between Freed and the Law Firm.

15. Also, at all times material hereto, the Law Firm, whether acting directly, or indirectly or vicariously through its partners, agents, servants, representatives and/or employees, acted as legal counsel for Elmer and Nelva, both individually and as trustees of the Family Trust. Therefore, as the Law Firm's clients, Elmer and Nelva were entitled to absolute fidelity from all of the Defendants because of the fiduciary duty owed to them by Defendants. Plaintiff, as the personal representative of Elmer and Nelva's estates, is the successor to Elmer and Nelva's rights for purposes of establishing privity with Defendants.

VI. CAUSES OF ACTION

A. Negligence

16. Defendants' actions as described herein constitute negligence. Of course, nothing Elmer or Nelva did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in the losses and damages complained about herein. To the extent Defendants did not properly, adequately, and/or timely understand the terms of the Family Trust or other documents Defendants themselves prepared or to the extent Defendants failed to apply the applicable Texas law as it related to their representation of and responsibilities to Elmer and Nelva, Defendants' acts or omissions set out herein constitute violations of the applicable standard of care for reasonably prudent and competent attorneys practicing law in Texas.

17. But for Defendants' actions as set forth herein, the damages complained of herein would not have been suffered. Thus, Defendants' conduct was a proximate and/or producing cause

of losses and damages suffered by Plaintiff. Those damages exceed the jurisdictional limits of this court.

B. Negligence *Per Se* – Violation of Texas Penal Code § 32.43; Commercial Bribery

18. Additionally, without waiving any of the foregoing, Defendants' acts are a violation of Penal Code Section 32.43. Specifically, that statute, in pertinent part, states:

> (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, intentionally or knowingly solicits, accepts or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
>
> (c) A person commits an offense if he offers, confers, or agrees to confer any benefit, the acceptance of which is an offense under Subsection (b).

19. Defendants' actions fall squarely within the statutory definition of commercial bribery set forth above. Defendants, while aware of their fiduciary duties to Nelva and with knowledge of applicable Texas law, violated subsection (b) above by accepting and/or agreeing to accept payments from the Current Trustees for changes made which directly impacted Nelva's rights, and by agreeing to continue to represent the Current Trustees after facilitating Nelva's removal as trustee of the Family Trust. This violation of this section of the Penal Code forms an additional basis for Plaintiff's assertion that such acts constitute negligence *per se*.

C. Negligence *Per Se* – Violation of Texas Penal Code §7.02(a)(2) & (3); Criminal Responsibility for Conduct of Another

20. The Current Trustees also violated Section 32.45 of the Texas Penal Code (misapplication of Fiduciary Property). Pursuant to section 32.45, a violation occurs when a trustee intentionally, knowingly or recklessly misapplies property he holds as a fiduciary in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the

Nelva. Those representations supplied false information for Elmer and Nelva's guidance. Defendants did not exercise reasonable care or competence in making the representations or in obtaining or communicating information described herein. Elmer and Nelva had no choice but to rely on the representations to their detriment, and Elmer and Nelva were in the identifiable class of people who would be expected to rely on such representations.

25. Specifically, Defendants represented, among other things, that Elmer and Nelva's plan for their estate would be protected, and Defendants negligently failed to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew their representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentations of facts and law material to Defendants' representation of Elmer and Nelva.

26. But for Defendants' actions, the damages sought herein would not have been sustained. Those damages are in excess of the jurisdictional limits of this court.

E. Breach of Fiduciary Duty

27. Defendants, acting for the benefit of Elmer and Nelva, owed them duties to act with loyalty and utmost good faith, to act with perfect candor, to act with integrity of the strictest kind, to be fair and honest in dealing with them, to provide full disclosure to them of all circumstances concerning their representation of Elmer and Nelva's interests, and to act without concealment or deception–no matter how slight. Defendants breached these duties owed to Elmer and Nelva through, among other things, the actions described herein. Instead of protecting or benefitting their original

property is held. The Current Trustees' actions involved substantial risk of loss for Nelva and the Family Trust, and ultimately that risk became reality.

21. Defendants' actions violate Section 7.02(a)(2) & (3) of the Texas Penal Code in that they acted with the intent to assist the commission of the Current Trustees' violation of Section 32.45 of the Texas Penal Code and aided or attempted to aid in the Current Trustees' violation of that section. Additionally, the Defendants, having a legal duty to prevent the Current Trustees from violating Section 32.45 of the Texas Penal Code, acted instead with the intent to assist the Current Trustees in violating Section 32.45 of the Texas Penal Code and failed to make a reasonable effort to prevent the commission of the offense.

22. These statutes are designed to protect a class of persons to which Nelva, the Family Trust, and its beneficiaries, including Nelva, belong against the type of injury suffered. The language of the statutes set out a clear prohibition from dealing inappropriately with property held by a fiduciary or assisting another in doing so. The Defendants did just that in assisting or allowing the Current Trustees to improperly obtain control of and misuse assets owned by Nelva or the Family Trust. As a result, the statues are of the type that impose tort liability because they codify the duties owed by parties such as Defendants when dealing with fiduciaries and fiduciaries' obligations.

23. The Defendants' violation of these statues was without legal excuse as all attorneys are charged with knowledge of the law. The Defendants' breach of the duty imposed by these statutes proximately caused injury to Plaintiff because it resulted in the depletion of Nelva's assets or of the Family Trusts' assets. This conduct also amounts to negligence *per se*.

D. Negligent Misrepresentation

24. In the alternative and without waiving any of the foregoing, Defendants are liable for damages based on negligent misrepresentation. Defendants made representations to Elmer and

clients, Defendants took on the representation of the Current Trustees and made it possible for the Current Trustees to enrich themselves and Carole at Nelva's expense. In doing so, Defendants benefitted by being compensated for their actions and by taking up the representation of the Current Trustees which apparently continues to this day. Thus, both Defendants' interests and the interests of Defendants' new clients, the Current Trustees, were placed above Nelva's interests, resulting in a breach of Defendants' fiduciary duties.

F. Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty

28. Alternatively, and without waiving any of the foregoing, Defendants are liable under all three doctrines of aiding and abetting a breach of fiduciary duty and the Current Trustees' violation of certain Penal Code statutes described herein by: (1) assisting and encouraging; (2) assisting and participating; and (3) concert of action. The Current Trustees and Anita acting under Nelva's power of attorney were the primary actors who committed torts and crimes which amount to breaches of fiduciary duties as described herein. Defendants had knowledge of the Current Trustees' tortious/criminal conduct and had the intent to assist them in committing those acts.

29. The Current Trustees' acts and omissions constitute breaches of fiduciary duty. A fiduciary relationship existed between the Current Trustees and the Family Trust and its beneficiaries, including Nelva. An additional fiduciary relationship was also created because of Anita's appointment in the power of attorney also prepared by Defendants for execution by Nelva. The Current Trustees, and Anita acting under Nelva's power of attorney, breached their fiduciary duties through, among other things, acts of self-dealing; concealing material facts about their disbursement of assets belonging to Nelva, Elmer's estate, and/or the Family Trust; and making unauthorized disbursements of such assets to or for the benefit of themselves and their children, to

Carole, and to Defendants, all to Plaintiff's financial detriment. Defendants assisted and/or participated in those breaches of fiduciary duty.

a. Assisting & Encouraging

30. Defendants gave the primary actors assistance and encouragement in committing the torts by, among other things, drafting the instruments which gave the Current Trustees and Anita control of the assets, drafting instruments which were used to improperly transfer those assets, assisting in obtaining Nelva's signature on documents and/or notarizing such documents, and advising the Current Trustees about such actions. This assistance and encouragement was a substantial factor in causing the breach of fiduciary duty because Defendants' voluntary assistance provided the very apparatus that allowed the Current Trustees and Anita to take unfair advantage of Nelva, Elmer's Estate, the Family Trust, and its beneficiaries, including Nelva.

b. Assisting & Participating

31. Defendants' actions alleged herein also constitute aiding and abetting the Current Trustees' and Anita's breaches of fiduciary duties by assisting and participating in those breach of trust and fiduciary duties. Defendants substantially assisted the Current Trustees and Anita in their actions to take control from Nelva and to then improperly disburse the assets over which the Current Trustees and Anita had assumed control from Nelva. Defendants' assistance and participation, separate from the Current Trustees' acts, breached Defendants' duties to Nelva. Defendants, by virtue of their purported representation of the Current Trustees and the other actions described herein, violated their duties as Nelva's legal counsel.

c. Concert of Action

32. Defendants are also liable for aiding and abetting the Current Trustees' and Anita's tortious conduct by their concert of action. Defendants' actions in helping the Current Trustees and

Anita obtain control was not only likely to cause damage, it did cause damage by resulting in changes to the terms of the Family Trust and Nelva's power of attorney without Nelva's effective consent and, thereafter, resulting in improper disbursements to or for the benefit of Amy, Anita, and Carole. Defendants' actions in assuming the Current Trustees' representation when it was in conflict with Nelva's representation was intentional and/or grossly negligent. Defendants' own acts, along with the Current Trustees' and Anita's acts, caused the damages sustained by Plaintiff which are in excess of the jurisdictional limits of this court.

G. Fraud

33. In the alternative and without waiving any of the foregoing, Plaintiff will show that Defendants' acts and omissions constituted fraud in that Defendants made material misrepresentations or omissions which included, among others, that Elmer and Nelva's plan for their estate would be protected, as well as Defendants' failure to disclose to Nelva that the Current Trustees were changing that plan in ways Nelva did not know, understand, or approve. Defendants also failed to disclose to Nelva that Defendants were representing the interests of the Current Trustees, rather than Nelva's interests. The circumstances described herein indicate Defendants knew that the representations were false and that there were failures to properly disclose relevant information to Nelva. Representations to Elmer and Nelva to the contrary and the lack of disclosure to Nelva amount to misrepresentation of facts and law material to Defendants' representation of Elmer and Nelva. Defendants either made those misrepresentations or omissions with knowledge of their falsity or made them recklessly without any knowledge of the truth and as a positive assertion. The misrepresentations and omissions were made with the intention that they should be acted on by Elmer and Nelva, and, indeed, Elmer and Nelva were compelled to rely on the

misrepresentations or omissions. As a result, Elmer and Nelva suffered damages in excess of the jurisdictional limits of this court.

34. All of the foregoing acts or failures to disclose were a proximate cause of Plaintiff's damages which are in excess of the jurisdictional limits of this court.

H. Conversion

35. Defendants' actions constitute conversion of assets to which Elmer's estate and Nelva had a superior legal right. Those actions are the proximate cause of the damages specified herein which are in excess of the jurisdictional limits of this court.

I. Conspiracy

36. Defendants' actions further constitute conspiracy to commit fraud and/or breach of fiduciary duty. Defendants and the Current Trustees were a combination of two or more persons. The object of the combination was to accomplish an unlawful purpose. Specifically, the object of the combination was to commit the breaches of fiduciary duty described herein.

37. The Current Trustees, Anita, and the Defendants had a meeting of the minds and had knowledge of the object and purpose of the conspiracy. The Current Trustees and Anita committed unlawful, overt acts to further the conspiracy by breaching their fiduciary obligations to Nelva, the Family Trust, and the beneficiaries of the Family Trust, including Nelva. Defendants committed overt acts to further the conspiracy by taking the improper actions they took to place the Current Trustees and Anita in a position of control and then to assist in the improper transfer of assets to or for the benefit of Amy, Anita, and Carole. As a proximate result of the wrongful acts underlying the conspiracy, Plaintiff suffered damages in excess of the jurisdictional limits of this court.

J. Deceptive Trade Practices

38. Defendants are liable under the Texas Deceptive Trade and Practices Act (hereinafter "DTPA") because (i) Elmer and Nelva were consumers, (ii) Defendants violated specific provisions of the DTPA, and (iii) the violations were a producing cause of Plaintiff's damages.

39. An express misrepresentation constitutes an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion, and thus violates Section 17.49(c)(3) of the DTPA. Defendants violated the DTPA by the actions described herein while accepting representation of and payment from Elmer and Nelva and thereafter facilitating the Current Trustees' improper actions.

40. Defendants' knowledge of the language of the Family Trusts, Elmer and Nelva's wishes, and Nelva's lack of understanding or consent to the changes sought by the Current Trustees, shows that Defendants' conduct, described herein, was committed knowingly and intentionally as those terms are defined by TEX. BUS. & COM. CODE ANN. Section 17.46 *et seq*. Accordingly, Defendants are liable to Plaintiff for additional damages as provided by the DTPA, including treble damages and reasonable attorney's fees necessary to bring this cause of action, all of which are being sought herein.

VII. TOLLING, FRAUDULENT CONCEALMENT, AND DISCOVERY RULE

41. Plaintiff would show that suit has been brought within the applicable statutory limitations periods. Such cause of action does not accrue until such time as there has been a legal injury and Plaintiff has brought suit within the applicable limitations of the time that Plaintiff suffered a legal injury, as that term is described in law.

42. Because Defendants fraudulently concealed information related to their involvement as described herein and/or failed to disclose same to Elmer, Nelva, or Plaintiff, this action has been

brought within the applicable period of limitations based upon when the injured parties learned, or in the exercise of reasonable diligence, could have learned of the actions.

43. To the extent any party pleads the statute of limitations as a defense, Plaintiff hereby asserts the discovery rule and would show that suit was filed within two years of Plaintiff's knowledge of such facts as would lead a reasonably prudent person to discover the Defendants' wrongful acts.

44. Further, Elmer's and Nelva's deaths resulted in a tolling of the statute of limitations, pursuant to Tex. Civ. Prac. & Rem. Code §16.062.

VIII. DAMAGES

A. Actual Damages

45. Regarding the causes of action and conduct alleged above, Plaintiff has sustained actual losses which were proximately caused by the joint conduct of Defendants. Plaintiff's damages exceed the minimum jurisdictional limits of this court. After completion of discovery, Plaintiff will amend the pleadings in order to indicate more specifically the type and amount of damages suffered.

B. Forfeiture of Fees

46. Defendants' breaches of fiduciary duty and violations of the Texas Penal Code legally deprive them of any right to a fee. Nonetheless, Defendants received fees for their services. Therefore, as additional damages, Plaintiff is entitled to a return of all fees actually collected by Defendants in their representation of Elmer, Nelva, or the Family Trust.

C. Treble Damages

47. As previously stated herein, Plaintiff seeks a money judgment as allowed by the DTPA, including treble damages.

D. Punitive Damages

48. Plaintiff seeks to recover punitive damages from Defendants, taking into consideration the nature of the wrong, the character of the conduct involved, the degree of Defendants' culpability, the situation and sensibilities of the parties concerned, the extent to which such conduct offends a public sense of justice and propriety, and Defendants' net worth. Additionally, Plaintiff will also show by clear and convincing evidence that Defendants acted with malice because their acts and omissions were either with a specific intent to substantially cause damage to Elmer and Nelva, or, when viewed objectively from the standpoint of Defendants at the time of the occurrences in question, involved an extreme degree of risk, considering the probability and magnitude of harm to Elmer and Nelva. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Elmer and Nelva. Thus, Plaintiff requests that the fact finder determine an appropriate punitive damages award.

E. Attorney's Fees

49. Because of Defendants' violation of the DTPA, the Trusts are entitled to reasonable attorney's fees necessary to prosecute this action. A reasonable attorney's fee recovery, including appellate fees, should be assessed against the Defendants. Plaintiff is also entitled to recover attorney's fees against Defendants pursuant to Tex. Prop. Code Ann. §114.064.

IX. INTEREST AND CONDITIONS

50. Plaintiff is entitled to prejudgment interest.

51. All conditions precedent to Plaintiff's right to recover have been performed or have occurred. The 60 day pre-suit notice normally required by Tex. Bus. & Comm. Code §17.505(a) is

not required because it is impracticable in light of the potential argument that certain limitations periods are nearing expiration.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein and that, after a trial on the merits, the Court grant the relief sought herein and award such other and further relief, both legal and equitable, to which Plaintiff is entitled.

Respectfully submitted,

BAYLESS & STOKES

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Telecopier on the 30th day of January, 2013, as follows:

Cory Reed
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One Riverway, Suite 1600
Houston, Texas 77056

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,	Ä	
	Ä	
Plaintiff,	Ä	
VS.	Ä	CIVIL ACTION NO. 4:12-CV-592
	Ä	
ANITA KAY BRUNSTING, *et al*,	Ä	
	Ä	
Defendants.	Ä	

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiffôs, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendantsô, Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiffôs renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiffôs motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust (ñthe Trustò). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

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recovery of legal fees and damages. The Court denied the plaintiffôs request for a temporary restraining order and for injunctive relief. However, concurrent with the Courtôs order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendantsô argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiffôs case.

The plaintiff gave notice and appealed the Courtôs dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Courtôs dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiffôs renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to ñprovide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting.ò According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiffôs request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Courtôs power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

17-20360.2258

PROBATE COURT 4

NO. 412.249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
vs.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

1 pers. in 4/9/13

PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

I.

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II.

Parties

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] These estates are collectively referred to herein as the "Estates." In his individual capacity, Plaintiff is referred to herein as "Carl." Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the "Family Trust"). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

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Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.

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Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust ("Anita's Trust").

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister. It is believed that Amy's counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva's death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the "Current Trustees". Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust ("Amy's Trust"). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl's Trust.

5. Defendant Carole Ann Brunsting ("Carole") is Carl's sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron's offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva's health care power of attorney and was made a joint signatory on Nelva's bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust ("Carole's Trust").

6. Candace Louise Curtis ("Candy") is Carl's sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust ("Candy's Trust") of which Anita and Amy are the co-trustees.

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III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

(a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;

(b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;

(c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;

(d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;

(e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistence to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

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Exhibit 3 to Deposition

powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than $150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

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accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

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tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

V.

Construction of Trust and Suit for Declaratory Judgment

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

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from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

VI.

Demand for Trust Accounting

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.

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25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

VII.

Breach of Fiduciary Duties

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;

b. resisting accountings of property and transactions;

c. failing to abide by the terms of the various trust instruments;

d. failing to preserve property and to prevent losses of property;

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e. conveying property in ways which were detrimental and in violation of their obligations;

f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;

g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;

h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;

i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;

j. failing to prevent transfers, gifts, or removal of assets;

k. failing to make appropriate and equal distributions;

l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;

m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;

n. failing to prevent transactions which were detrimental to their family members and the trusts;

o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and

p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of

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those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minium jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

VIII.

Conversion

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

IX.

Negligence

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.

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33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

X.

Tortious Interference with Inheritance

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

XI.

Constructive Trust

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the

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amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

XII.

Civil Conspiracy

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

XIII.

Fraudulent Concealment

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

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XIV.

Discovery Rule

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

XV.

Tolling of Limitations

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

XVI.

Conditions Precedent

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

XVII.

Prejudgment Interest

45. Plaintiff is also entitled to prejudgment interest on his claims.

XVIII.

Request for Attorneys' Fees

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

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in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

XIX.

Request for Injunctive Relief

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it

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may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

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2016-52693 / Court: 113

XXI.

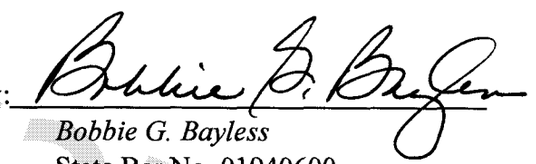
Plaintiff's Requests for Disclosures to Defendants

52. Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

BAYLESS & STOKES

By: 

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Telecopier: (713) 522-2218
bayless@baylessstokes.com

Attorneys for Plaintiff

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17-20360.2277

CERTIFIED DOCUMENT

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

Carl Henry Brunsting
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8th day of April, 2013, to certify which witness my hand and official seal.

SHAWN M. TEAGUE
MY COMMISSION EXPIRES
April 3, 2015

Shawn M. Teague
Notary Public in and for the
State of T E X A S
Printed Name: Shawn M. Teague
My Commission Expires: 4-3-2015

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THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING NELVA E. BRUNSTING

Co-Trustees

Period #1

Both Spouses Living

Husband & Wife are:
- Founders
- Trustees
- Beneficiaries

- Complete control of assets
- Avoids guardianship

- Can be amended or revoked
- No change in income taxes

DEATH OF FIRST SPOUSE

Survivor's Trust (Share Two) (Irrevocable) QTIP

All Income
Principal for needs

Survivor's Trust (Share One) (Revocable) A

All Income
Principal for needs
5% or $5,000.00

Decedent's Trust (Irrevocable) B

Surviving Spouse is:
- Founder
- Trustee
- Beneficiary

- Complete control of assets (A&B&QTIP)
- Right to give away assets (A)

- Protected from creditors (QTIP&B)
- Grows estate tax free (B)

Period #2

Surviving Spouse

- No probate on death of first spouse
- No estate tax on death of first spouse
- Avoids guardianship for surviving spouse

DEATH OF SURVIVING SPOUSE

A + B + QTIP

Period #3

Both Spouses Deceased

Successor Trustee(s):
- Manage assets
- Distribute assets

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART, as Co-Trustees

- No probate on death of surviving spouse
- In 2005 $3,000,000 can be passed estate tax free.

- Divided among beneficiaries
- Protects grandchildren if child dies
- Flexibility of distribution
- No outside interference

CANDACE LOUISE CURTIS	1/5
CAROL ANN BRUNSTING	1/5
CARL HENRY BRUNSTING	1/5
AMY RUTH TSCHIRHART	1/5
ANITA KAY RILEY	1/5

Beneficiaries

FILED
2/12/2015 1:51:33 PM
Stan Stanart
County Clerk
Harris County

PROBATE COURT 4

DM

DATA-ENTRY
PICK UP THIS DATE

CAUSE NO. 412,249

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

JURY FEE PAID

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Second Amended Petition and for cause of action would show as follows:

I. PARTIES

Plaintiff, Candace Louis Curtis is a citizen of the State of California.

Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant is Carole Ann Brunsting, is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

Necessary Party is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

II. JURISDICTION AND VENUE

This Court had jurisdiction pursuant to Sections 32.002(c) and 32.005 of the Texas Estates Code, Chapter 37 of the Texas Civil Practice and Remedies Code, and Chapter 115 of the Texas Property Code. Venue is proper pursuant to Section 33.002.

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III. BACKGROUND

Elmer and Nelva Brunsting created the Brunsting Family Trust, and placed essentially all of their assets into this Trust, of which they were the trustees. The Trust became irrevocable and not subject to amendment upon Elmer's death in 2009, at which time Nelva became the sole trustee of the two trusts into which the Family Trust was divided: the Decedent's Trust and the Survivor's Trust. She also became the sole beneficiary of the Survivor's Trust and the primary beneficiary of the Decedent's Trust.

In 2010, Defendants Anita and Amy began taking steps to control the Trust assets and garner a larger share than their siblings. To that end, they caused Nelva to execute a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment in June of 2010 in which she exercised her power of appointment over all the property held in the Nelva E. Brunsting Survivor's Trust as well as in the Elmer H. Brunsting Decedent's Trust. The June exercise of Power of Appointment went on to ratify and confirm all the other provisions of the Trust. Two months later, they caused Nelva to execute a second Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment, in which she attempted to exercise the very same power of appointment she had exercised in June without revoking the prior exercise – instead she ratified and confirmed the June 2010 Power of Appointment. This second Qualified Beneficiary Designation purports to remove Candy and Carl as the trustees of their own trusts, while not subjecting Amy and Anita to that same fate, and contains paragraphs of self-serving no-contest provisions.

Seemingly because the future power she had obtained for herself was insufficient, Anita had Nelva resign as Trustee in December of 2010, in Anita's favor. As Trustee, Anita made numerous transfers that far exceeded the scope of her powers. She conveyed to Carole 1,325 shares of Exxon stock out of the Decedent's Trust, and gave 1,120 shares of Exxon to Amy out of the Survivor's

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Trust, plus 270 shares of Chevron stock (held in the names of Amy's children). To herself she transferred 160 shares of Exxon, plus 405 shares of Chevron (270 shares she placed in the name of her children). Anita also paid herself thousands of dollars in the form of gifts, fees and reimbursements, and did the same for both Amy and Carole.

Carole not only received hundreds of thousands dollars worth of stock and cash distributions, she also had access to a bank account that Anita funded with Trust monies and used that bank account for her own purposes. She routinely charged this Trust account for her personal groceries, gasoline, and other expenses despite not being a present income beneficiary of the Trust.

IV. CAUSES OF ACTION

Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Defendants Anita breached this duty during Nelva's life by engaging in self-dealing and taking actions not permitted by the terms of the Trust, and thus is liable to the Estate and derivatively to Plaintiff for these breaches. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest and costs of court.

Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and

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her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

Money Had and Received. Defendants Anita, Amy and Carole have taken money that belongs in equity and good conscience to the Trust and derivatively to Plaintiff, and have done so with malice and through fraud, in part by representing that transfers to them were valid reimbursements. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

Conversion. Defendants Anita, Amy and Carole have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court

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costs, both individually and on behalf of the Decedent's Estate.

Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants Amy, Anita, and Carole, herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed both the June and August Qualified Beneficiary Designations and Exercises of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. The Modification Documents fail because they attempted to change the terms of the Trust. Assuming without admitting that the June Modification Document is a valid Power of Appointment, then the August Modification Document fails because Nelva had already effectively appointed all of the Trust property in June; she never revoked that Power of Appointment, but actually affirmed it. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

Declaratory Judgment Action. The Family Trust Agreement governed all of the rights and

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powers that Anita held as Trustee. Those rights and powers did not allow her to transfer out the shares of Exxon and Chevron stock. Her duties as a Trustee prevented her from distributing Trust Assets to some beneficiaries to the detriment and for the purpose of harming other beneficiaries. Plaintiff seeks a declaration that the distributions of Chevron Stock and Exxon Stock to Amy, Anita and Carole are void because Anita as Trustee exceeded the scope of her power in making those gifts.

Unjust Enrichment. Defendants Amy, Anita and Carole have all been unjustly enriched by their receipt of Chevron Stock, Exxon Stock, and cash from the Trust. None were entitled to the distributions of stock, and a majority of the cash transfers were for purposes not authorized under the scope of the Trust Agreement nor of the purposes they alleged to be for. Plaintiff seeks a declaration that the Defendants were unjustly enriched, and seeks the imposition of a constructive trust on the remaining Chevron Stock and Exxon Stock that remains in their possession, as well as on any cash or proceeds from the sale of said stock and on any cash distributions from the Trust.

Conspiracy. Upon information and belief, Defendants Anita, Amy and Carole all conspired to make improper withdrawals and distributions from the Trust, to decrease Plaintiff's inheritance and interest in the Trust, to enrich themselves at the expense of the Trust and other beneficiaries, and to conceal the impropriety of their actions. They should be found jointly and severally liable for the decrease in the Trust, and should be required to disgorge their ill-gotten gains.

Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance with the Texas Property Code.

V. JURY DEMAND

Plaintiff hereby makes her demand for a jury trial in this matter.

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VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to her and to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

ostrommorris, PLLC

BY: _____

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713.863.1051 (Facsimile)

Attorneys for Plaintiff

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2015-02525 / Court: 164

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 11th day of February, 2015:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. Bradley Featherston
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Houston, Texas 77079
281.759.3213
281.759.3214 (Facsimile)

Mr. Neal Spielman
1155 Dairy Ashford, Suite 300
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281.870.1124
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Jason B. Ostrom/
R. Keith Morris, III

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3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

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03/02/2015 08:15:P0002

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

****

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Christine Butts
JUDGE PRESIDING

03092015:0815:P0003

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: _____

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for Carl Brunsting

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Attorney for Carole Brunsting

0309201S:0815:P0004

APPROVED AS TO FORM:

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03092015:0815:P0004

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Attorney for Amy Brunsting

PROBATE COURT 4

No. 412,249-401

ESTATE OF	§	PROBATE COURT
	§	
Nelva E. Brunstrom,	§	NUMBER FOUR (4) OF
	§	
Deceased	§	HARRIS COUNTY, TEXAS

AGREED DOCKET CONTROL ORDER

The following docket control order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. N/A **JOINDER**. All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THE SCHEDULING ORDER AT THE TIME OF SERVICE

2. ↓ **EXPERT WITNESS DESIGNATION**. Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6:

(a) 7/1/15 Experts for parties seeking affirmative relief.

(b) 8/1/15 All other experts.

3. **DISCOVERY LIMITATIONS**. The discovery limitations of Rule 190.2, if applicable, or otherwise, of Rule 190.3, apply, unless changed below:

(a) ____ Total hours per side for oral depositions.

(b) By Rules Number of interrogatories that may be served by each party on any other party.

4. _____ **ALTERNATIVE DISPUTE RESOLUTION**. ADR conducted pursuant to the agreement of the parties must be completed by this date. **If the parties do not agree on a date and/or facilitator for ADR, the Court may sign an order compelling ADR and appointing a mediator for same.**

5. 8/4/15 **DISCOVERY PERIOD ENDS**. All discovery must be completed before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.

6. **DISPOSITIVE MOTIONS AND PLEAS**. Must be heard as follows:

(a) 8/3/15 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.

(b) 8/3/15 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.

(c) 6/1/15 Rule 166a(i) motions may not be filed before this date.

7. 9/1/15 **CHALLENGES TO EXPERT TESTIMONY**. All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.

8. 8/4/15 **PLEADINGS**. All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.

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9. Sept. 4, 2015 Noon **JOINT PRETRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Joint Pretrial Order by this date.** Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. Sept. 11, 2015 10:00 A.M **PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.**

11. Sept. 14 - 18, 2015 **TRIAL.**

Signed this 19 day of February, 2015.

C. Austin
Judge Presiding

FILED
2015 FEB 20 AM 8:49
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

Party: Carole Brunsting

Counsel Name: Darlene Payne Smith
SBN: 18643525
Counsel Signature:
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Fax: 713-658-1921
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Party: Cindy Brunsting

Counsel Name: Jason B. Ostrom
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Party: Carl Brunsting

Counsel Name: Bobbie G. Bayless
SBN: 01940600
Counsel Signature:
Firm: Bayless + Stokes
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PARTY: Anita Brunsting
COUNSEL: Brad Featherston (24038892) BF
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17.20360.2295

United States District Court
Southern District of Texas
FILED
SEP 21 2016
David J. Bradley, Clerk of Court

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	

Defendant Amy Brunsting's Rule 12(b)(6)
Motion to Dismiss for Plaintiff's Failure to State a Claim

Plaintiffs sued me, defendant, Amy Brunsting, along with two state judges, a court reporter, and eleven attorneys for alleged RICO violations. The complaint should be dismissed because the plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs allege that I am involved in a racketeering enterprise in a probate case pending in Harris County Probate Court No. 4, under C. A. No. 412,249-401, *Estate of Nelva Brunsting, Deceased.* Nelva Brunsting was my mother. Plaintiffs allege that I conspired with two state judges, a court reporter, numerous attorneys (including attorney Jason Ostrom who was hired by the plaintiff Candace Brunsting) in a "secret society" to engage in illegal wiretapping, theft, extortion, forgery, wire fraud, and fraudulent transfer of securities as part of a racketeering group they refer to as "Harris County Tomb Raiders" and "the Probate Mafia". Plaintiffs claim that they were harmed by this alleged conspiracy. I know of no conspiracy, nor have I ever conspired with anyone regarding any of these matters. Plaintiffs have provided no facts to support their complaints.

Plaintiffs claim that I intercepted, recorded, possessed, concealed, manipulated, and disseminated illegal wiretap recordings of conversations made on my mother's telephone line. I

17-20360.2296

have been told that these are recorded phone messages that were found on my mother's answering machine. It is my understanding that these recordings were made while my mother was alive. I have never heard any of these recordings and my mother never discussed them with me. I have never possessed any of these recordings. Plaintiffs fail to provide facts to show that I possessed or in any way handled these recordings.

Plaintiffs claim that my answers to Plaintiff Curtis' interrogatories posed in her lawsuit against me in the Harris County Probate Court contained extortion threats. I have no idea what she is referring to. I made no threats against Plaintiff Curtis or anyone else in my replies to her questions.

Plaintiffs refer to a "heinous extortion instrument", but I believe they are referring to the qualified beneficiary trust (QBT) agreement that was executed by my mother, not by me. This document was executed before I became a trustee. I did not become a trustee until after the death of my mother, and I had no involvement with or authority over my mother's financial or trust matters while she was living. I had no involvement in the preparation of the QBT. After reading the QBT, I could not find any language in the document that could be used to extort the plaintiffs. There are no facts to show that I took or extorted anything from the plaintiffs.

Plaintiffs allege that attorney Bernard Matthews and I filed a false affidavit in a suit that Candace Curtis filed against me and others (Candace Louise Curtis v. Anita Brunsting et al., No. 4:12-cv-00592). The suit was a *lis pendens* filed by Plaintiff Curtis to prevent the sale of our mother's home. Mother passed away on November 11, 2011. After her death, her home was appraised and put up for sale. In 2012 a buyer offered us more than the appraised value, so we accepted the offer. The transaction was handled by a reputable title company. I did not file any

false affidavits during this proceeding or any other proceeding. Plaintiffs provide no information of the document in question, and they provide no facts regarding this claim.

Finally, I have never met nor spoken to one of the plaintiffs, Rik Munson. I have never corresponded with him prior to the filing of this suit. I have no business or personal contracts with or obligations to Rik Munson. Said plaintiff has not provided an explanation of how I caused him any harm.

Plaintiffs' claims are vague, conclusory, and based entirely on inference and speculation.

Prayer

I pray that the Court grant my motion to dismiss for plaintiffs' failure to state a claim and for such other and further relief, general and specific, legal and equitable, to which I may be entitled to receive.

Respectfully submitted,

//s// Amy Brunsting

Amy Brunsting
2582 Country Ledge Drive
New Braunfels, Texas 78132
Pro Se Defendant

17-20360.2298

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via first class mail:

1. Candace L. Curtis — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020

2. Rik Wayne Munson — Plaintiff, Pro Se
   218 Landana Street
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   925-349-8348

3. Candace Kunz-Freed — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
   One Riverway, Suite 1400
   Houston, TX 77056

4. Albert Vacek, Jr. — Defendant
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   One Riverway, Suite 1400
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5. Bernard Lyle Matthews III — Defendant
   11777 Katy Freeway, Suite 300 South
   Houston, TX 77079

6. Anita Kay Brunsting — Defendant
   203 Bloomingdale Circle
   Victoria, TX 77904

7. Neal E. Spielman — Defendant
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   Houston, TX 77079

8. Bradley Featherston — Defendant
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9. Stephen A. Mendel — Defendant
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10. Darlene Payne Smith — Defendant
Crain, Caton & James
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1401 McKinney, Suite 1700
Houston, TX 77010

11. Jason B. Ostrom — Defendant
Ostrom Morris, P. L. L. C.
6363 Woodway, Suite 300
Houston, TX 77056

12. Gregory Lester — Defendant
955 N. Dairy Ashford, Suite 220
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13. Jill Willard Young — Defendant
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14. Bobbie Bayless — Defendant
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16. Clarinda Comstock — Defendant
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201 Caroline, 7th floor
Houston, TX 77002

17. Toni Biamonte
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7th floor
Houston, TX 77002

Defendant

on this 19th day of September 2016.

//s// Amy Brunsting

Amy Brunsting

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969 (Alfred H. Bennett)
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	

Order Granting Defendant Amy Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim

The Court considered defendant Amy Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim.

Finding that the plaintiffs' failed to state a claim for which relief may be granted, the defendant's motion is GRANTED and the plaintiffs' suit is dismissed.

SIGNED on this _____ day of _____, 2016.

_____
United States District Judge

17-20360.2302

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
VS.	§	CIVIL ACTION NO. 4:16-CV-01969
CANDACE KUNZ-FREED, ALBERT VACEK, JR., ET AL	§	

Defendants Mendel's & Featherston's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' Failure to State a Claim

I. Summary of the Argument

1.1. The Texas doctrine of attorney immunity bars plaintiffs' claims. It is undisputed that defendants Mendel and Featherston have: (a) never had an attorney/client relationship with either of the plaintiffs; and (b) only served as attorneys in the defense of co-trustee Anita Brunsting. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5TH Cir. 2016).

1.2. The complaint does not provide defendants with fair notice of plaintiffs' claims. Plaintiffs allege that defendants were part of an entity that violated the RICO statute and enumerate several predicate acts allegedly engaged in by defendants, but do so through inference, speculation, and conclusive statements. Such vague statements fail to place defendants on notice of how the entity is alleged to have operated, how the predicate acts furthered the larger conspiracy, or how the defendants knew that these acts would further any conspiracy. By way of example and not as a limitation, Mr. Featherston is alleged to have engaged in illegal wiretapping, the occurrence of which was inferred by the plaintiffs based on the production of voicemail recordings and nothing more. One problem, among others, is that Mr. Featherston's alleged wiretaps predate his involvement with the case.

II. Nature of the Case

2.1. The pro se plaintiffs are Candace Louise Curtis and Rik Wayne Munson. Defendants are Stephen A. Mendel and Bradley E. Featherston, among others. Messrs. Mendel and Featherston are attorneys licensed by the State Bar of Texas. Mr. Mendel is current counsel for Co-Trustee Anita

Brunsting. Mr. Featherston is a former associate attorney of Mr. Mendel, and previously assisted Mr. Mendel with the defense of Co-Trustee Anita Brunsting.

2.2. In addition to suing Messrs. Mendel and Featherston, plaintiffs sued nine (9) other attorneys, two (2) probate judges, and a court reporter for violations of the Racketeer Influenced Corrupt Organization Act (RICO).

2.3. Plaintiffs alleged that all of the defendants were part of a conspiracy in which several Houston area law firms and Harris County Probate Court No. 4 worked in concert to defraud heirs of their inheritances in order to enrich themselves. Plaintiffs' dubbed this alleged entity as the "Harris County Tomb Raiders, a/k/a the Probate Mafia."

2.4. Plaintiffs allege that they were harmed by the Tomb Raiders through its involvement in a related probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, *Estate of Nelva Brunsting, Deceased*. In particular, Mr. Featherston allegedly committed acts of illegal wiretapping and extortion in furtherance of the conspiracy. Both Messrs. Mendel and Featherston were allegedly involved in a conspiracy within the larger conspiracy to induce plaintiff Curtis to sign away valuable trust interests through extortion by way of a "sham mediation."

2.5. For the Court's benefit, plaintiff Curtis and her siblings participated in a mediation in August 2014. No other mediation has occurred. Since Messrs. Mendel and Featherston did not make an appearance as counsel of record until November 2014, it is impossible for them to be involved in a "sham mediation."

2.6. In Spring 2016, the Probate Court ordered a mediation among the parties, and that mediation was scheduled for July 2016, but the mediation never occurred. As such, assuming arguendo that a mediation is a course of conduct not protected by the Texas attorney immunity

doctrine, it is impossible for Messrs. Mendel and Featherston to participate in a sham mediation that never occurred.

III. Argument

3.1. A court has the authority to dismiss a suit for failure to state a claim upon which relief can be granted if the complaint does not provide fair notice of the claim and does not state factual allegations showing the right to relief is plausible. *See Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009); *Bell Alt. Corp. v. Twombly,* 550 U.S. 544, 555-56 & n.3 (2007).

3.2. A careful reading of the plaintiffs claims against Messrs. Mendel and Featherston show that those claims are all related to their roles as attorneys in the defense of Co-Trustee Anita Brunsting. As such, the claims are barred as a matter of law by the Texas attorney immunity doctrine. *Troice*, 816 F.3d at 348. The Texas attorney immunity doctrine provides true immunity from suit and is not merely an affirmative defense. *Id*. at 346. Dismissal is, therefore, warranted regardless of the merits of the alleged conduct. *Id*. at 348-49.

3.3. More specifically, the plaintiffs' allege that Mr. Featherston engaged in wiretapping and theft/extortion, and that both Messrs. Mendel and Featherston were involved in a conspiracy to commit theft/extortion, all of which were done in furtherance of the larger RICO conspiracy. However, the actions underlying these claims are: (1) arguing in the probate court or through judicially filed instruments for the admissibility of voicemail recordings, which is alleged as "wiretapping;" (2) arguing in the probate court or through judicially filed instruments that claims for trust distributions violated the no-contest clause of the Qualified Beneficiary Trust ("QBT"), which is alleged as "theft/extortion;" and (3) arguing in the probate court or through judicially filed instruments that the parties should mediate, which is the "conspiracy to commit theft/extortion."

3.4. Each alleged act as to Messrs. Mendel and Featherston is the kind of conduct that an attorney normally engages and is expected to engage when representing a client and is entirely covered by attorney immunity. *See Troice*, 816 F.3d at 348 (the defendant attorney sent letters to the SEC regarding jurisdiction, communicated with the SEC about document discovery and the legitimacy of his client's business, stated that certain witnesses would provide more relevant testimony than others in a deposition, and represented one of his client's executives in a deposition). Because all of the plaintiffs' claims derive from conduct covered by attorney immunity, the complaint fails to state a claim for which relief may be granted and should be dismissed for this reason alone.

3.5. Yet, the plaintiffs' claims can be dismissed for a second reason, which is that the claims fail to provide Messrs. Mendel and Featherston with fair notice of what they allegedly did wrong. *Ruvio v. Wells Fargo Bank N.A.,* 766 F.3d 87, 90-91 (1ST Cir. 2014); *Brooks v. Ross,* 578 F.3d 574, 581-82 (7TH Cir. 2009). A complaint that provides only labels and conclusions or formulaic recitation of the elements of a cause of action is insufficient to show grounds for the plaintiff to be entitled to relief. *Iqbal,* 556 U.S. at 678; *Twombly*, 550 U.S. at 555 & n.3; *Brooks*, 578 F.3d at 581.

3.6. In addressing their claim that a broad RICO type conspiracy exists between the defendant law firms and the probate court, the plaintiffs describe the alleged "entity" as "a secret society . . . associated together for the purpose of carrying out an ongoing criminal theft enterprise . . . through a multi-faceted campaign of lies, fraud, threats, and official corruption in furtherance of a conspiracy involving a pattern of racketeering activity . . . ." This description is repeated with slight variations throughout the complaint and appears to have been crafted by combining several definitions taken from 18 U.S.C. § 1961, and a vague list of types of alleged actions taken by those

involved in the conspiracy in furtherance of the same. There is not a single fact of what Messrs. Mendel and Featherston said that were lies or threats, no facts to show fraud, nor any factual explanation as to how Messrs. Mendel and Featherston could commit official corruption when neither is a government official.

3.7. Likewise, the plaintiffs cannot describe a single fact as to how Messrs. Mendel and Featherston used the "entity" to syphon "off the assets of our elders . . . through . . . schemes and artifices" as part of a plan which they refer to as "Involuntary Redistribution of Assets." There are no facts to show how this alleged scheme works, whom are the elders, the types of assets that are being syphoned off, the value of the assets allegedly being syphoned, nor how much Messrs. Mendel and Featherston wrongfully received.

3.8. The plaintiffs admit that "the specific quid pro quo profit sharing is unknown" to them, but insist that proof of "a reciprocal stream-of-benefits necessarily flows from the fact of the in-concert activities of the co-conspirators." Nebulous rhetoric, conclusory statements, and unsupported presumptions do not constitute facts and, therefore, are insufficient to sustain a claim against Messrs. Mendel and Featherston.

3.9. When plaintiffs attempt to describe overt acts in furtherance of the conspiracy by particular defendants they are similarly vague and conclusory. As previously indicated, the plaintiffs claim that Mr. Featherston engaged in illegal wiretapping in furtherance of the conspiracy. The basis for this claim is that Mr. Featherston argued in court or through judicial instruments for the admissibility of recordings of telephone conversations between Curtis' brother, Carl Brunsting and their mother, Nelva Brunsting.

3.10. The plaintiffs' main argument that these recordings were obtained via an illegal

wiretapping device seems to be the existence of the recordings of private conversations that, they believe, could only be obtained by wiretapping Carl's telephone. However, in reality, the recordings are nothing more than recorded messages from Nelva Brunsting's answering machine that were produced during discovery in the underlying probate case. Producing 2011 recordings made by others as required the Texas Rules of Civil Procedure does not mean the attorney producing the recordings in 2014 or thereafter engaged in wiretapping.

3.11. Plaintiffs further allege that Mr. Featherston, along with other defendant attorneys, provided evidence that such wiretapping occurred by arguing that the recordings were admissible. Plaintiffs argue that Mr. Featherston implied that he knew the nature of the "device," its ability to record accurately, and the qualifications of its operator by arguing for the recordings' admissibility. What the plaintiffs fail to explain is why any "device" attached to Carl Brunsting's telephone would be necessary when the recordings were available from the decedent's answering machine, or how Mr. Featherston was involved with the use of such a device.

3.12. Plaintiffs also fail to account for the fact that the recordings in question were made in Spring 2011, more than three (3) years before Mr. Featherston was even involved with the probate case. Absent any facts, much less specific facts, the plaintiffs' claims are based entirely on speculation and inference and do not state a claim to which the defendants may or should have to respond.

3.13. Plaintiffs also claim that Mr. Featherston engaged in state law theft and/or federal law extortion by asserting that plaintiff Curtis' and Carl Brunsting's applications for interim distributions violated the no-contest clause of the QBT. The QBT was prepared by defendant Alfred Vacek, Jr. in August 2010 at the request of his now deceased client, Nelva Brunsting. Neither Mr. Featherston,

nor Mr. Mendel, nor their client, Co-Trustee Anita Brunsting, were involved with the drafting of the QBT in any way. As such, unless a court of competent jurisdiction declares the QBT invalid, Messrs. Mendel and Featherston and their client have the right to make any argument they so desire with regard to the enforceability of the provisions of the QBT, and such arguments cannot, as a matter of law, constitute predicate RICO acts.

3.14. Notwithstanding the fact that the plaintiffs lack a judicial determination that the no-contest clause is not enforceable, the plaintiffs claim the QBT is an "extortion instrument" being used to "instill fear of economic harm" in plaintiff Curtis and Carl Brunsting. Plaintiffs' description of both the purpose of the "extortion instrument" and its alleged use to harm plaintiffs is vague and conclusory in that it does not explain how or when any threats were made, the nature of the threats, which specific defendants made the threats, or give any indication as to how Mr. Featherston was supposed to have known of the threats so that his objection would become part of a wider conspiracy to extort anything from plaintiffs. Without such additional information, the complaint fails to state a claim to which the defendant can provide an answer.

3.15. Finally, plaintiffs' allege that Messrs. Mendel and Featherston, along with several other attorneys, engaged in a conspiracy, in support of the larger conspiracy, to commit theft and extortion through a "sham mediation" in which plaintiff Curtis was coerced into signing away valuable inheritance rights. Leaving aside whether the mediation in question was or was not a "sham," the plaintiffs only make a bare assertion that it was.

3.16. The larger problem with this claim is that there were two (2) mediations in the case in question. The plaintiffs argue that the first mediation was tainted by threats, intimidation, and a "thug mediator," but never explain how the first mediation was a "sham mediation." Furthermore,

the plaintiffs fail to explain how a second mediation that never occurred was a sham mediation, or how there can be liability for something that never occurred.

IV. Prayer

Defendants Mendel and Featherston pray that the Court grant their motion to dismiss for plaintiffs' failure to state a claim and for such other and further relief, general and special, legal and equitable, to which it may be entitled to receive.

Respectfully Submitted,

// s // Stephen A. Mendel

Stephen A. Mendel (13930650)
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stephen@mendellawfirm.com

Attorney for Defendants Mendel & Featherston

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via e-service, email, or first class mail:

1. Candace L. Curtis — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020

2. Rik Wayne Munson — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-349-8348

3. Anita Brunsting — Defendant, Pro Se
   203 Bloomingdale Circle
   Victoria, Texas 77904

4. Candace Kuntz-Freed — Defendant
   c/o Cory S. Reed
   Thompson, Coe, Cousins & Irons, L.L.P.
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7. Amy Ruth Brunsting — Defendant
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   New Braunfels, Texas 78132

8. Neal E. Spielman — Defendant
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   Houston, Texas 77079

9. Bradley Featherston — Defendant
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11. Jason B. Ostrom — Defendant
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713-863-8891

12. Gregory Lester — Defendant
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Houston, Texas 777079

13. Jill Willard Young — Defendant
MacIntyre, McCulloch, Stanfield
and Young, L.L.P.
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Houston, Texas 77027

14. Bobbie Bayless — Defendant
Bayless & Stokes
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Houston, Texas 77098

15. Christine Riddle Butts — Defendant
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Houston, Texas 77002

16. Clarinda Comstock — Defendant
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 770002

17. Toni Biamonte
Office of the Court Reporter
Harris County Civil Courthouse
201 Caroline, 7TH floor
Houston, Texas 77002

Defendant

on this September 30, 2016.

// s // Stephen A. Mendel

Stephen A. Mendel

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

CANDACE LOUISE CURTIS	§	
&	§	
RIK WAYNE MUNSON	§	
	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, et al.	§	

Defendants Mendel's & Featherston's
Certificate of Interested Parties

Defendants, Stephen A. Mendel and Bradley E. Featherston, file this certificate of interested parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiffs:

   A. Candace Louise Curtis
   B. Rik Munson

2. Defendants:

   A. Candace Kunz-Freed
   B. Albert Vacek, Jr.
   C. Bernard Lyle Matthews
   D. Anita Brunsting
   E. Amy Brunsting
   F. Neal Spielman
   G. Bradley Featherston
   H. Stephen A. Mendel
   I. Darlene Payne Smith
   J. Jason Ostrom
   K. Gregory Lester
   L. Jill Willard Young
   M. Bobbie Bayless
   N. Christine Riddle Butts
   O. Clarinda Comstock
   P. Toni Biamonte

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following persons via e-service, email, or first class mail:

1. Candace L. Curtis — Plaintiff, Pro Se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020

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4. Amy Ruth Brunsting — Defendant, Pro Se
   2582 Country Ledge
   New Braunfels, Texas 78132

5. Hon. Christine Riddle Butts — Defendant
   Harris County Civil Courthouse
   201 Caroline, 7TH floor
   Houston, Texas 77002

6. Hon. Clarinda Comstock — Defendant
   Harris County Civil Courthouse
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8. Gregory Lester — Defendant
   Attorney at Law
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   Houston, Texas 777079

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16. Jason B. Ostrom — Defendant
Ostrom Morris, P.L.L.C.
6363 Woodway, Suite 300
Houston, Texas 77056
713-863-8891

on this September 30, 2016.

// s // Stephen A. Mendel

Stephen A. Mendel

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S MOTION TO STRIKE PLAINTIFFS' "ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT"

On July 5, 2016, Plaintiffs filed a frivolous, 64-page "Verified Complaint" consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law that are plainly insufficient to survive dismissal (the "Complaint"). On September 15, 2016, Defendant Jill Young filed her Motion to Dismiss. After the filing of Ms. Young's Motion to Dismiss, Plaintiffs filed a thirty-one page long "Addendum of Memorandum in Support of Rico Complaint," with more than 1,400 pages of attached "exhibits" (the "Addendum"). *See* DKT. 26.

Ms. Young now files this Motion to Strike the Addendum, because it has no legal effect. And even if it were effective, it does not change the merits of Ms. Young's Motion to Dismiss, which should be granted.

I. The "Addendum" has no Legal Effect.

The Addendum—filed *after* Ms. Young was served with the Original Complaint and *after* she filed her 12(b)(6) Motion to Dismiss—has no legal effect. It is not a "pleading" under the Federal Rules of Civil Procedure. Specifically, Federal Rule of Civil Procedure 7(a) says:

Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

See Fed. R. Civ. P. 7(a). And although a party can amend its complaint as a matter of course after the filing of a responsive pleading, the Addendum cannot be an amended complaint, because it alleges no causes of action against Ms. Young.

Because the Addendum is not a complaint, it is not a valid pleading under the Federal Rules of Civil Procedure, and it should be struck.

II. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss.

Even if the Addendum were treated as Plaintiffs' Complaint (or some portion of Plaintiffs' Complaint), it does not change the merits of Ms. Young's Motion to Dismiss. The Addendum only refers to Ms. Young in four places, in paragraphs 96, 97, 99, and 107. *See* Addendum, at ¶¶ 96, 97, 99, and 107. In full, those paragraphs state:

> 96. The only matter properly before the court on September 10, 2015 was whether or not Mr. Lester should have the authority to retain Jill Willard Young to assist him in his administration obligations to the estate.
>
> 97. Neither individual Plaintiff Candace Curtis nor individual Plaintiff Carl Brunsting was in attendance September 10, 2015, as neither is party to the estate litigation and neither objected to Mr. Lester retaining Jill Young to assist with his fiduciary duty to evaluate the estate's claims. That was the only issue properly before the Court on September 10, 2015 and did not include the matters Mr. Spielman states were discussed and where there was apparently an agreement made to treat the Gregory Lester report as if it were a jury verdict before it was even written.

> * * *
>
> 99. The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs who were prejudiced by those discussions, involving matters not properly before the Court, wherein there were agreements made between the Court, Jill Willard Young, Neal Spielman, Bradley Featherston, Stephen Mendel and Gregory Lester to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter. First to "unentrench" Plaintiff Curtis from her stand upon rights and reliance upon the rule of law in the face of this all too obvious public corruption conspiracy and second, to deprive Plaintiff of substantive due process and access to the Court.
>
> * * *
>
> 107. Mr. Spielman confessed on March 9, 2016 that the attorneys conspired at the hearing on application to retain Jill Young, with the probate Court Judges, the Court's crony administrator Gregory Lester, and Jill Young, entering into an illicit agreement to produce a fictitious "report" and to subsequently treat the fiction as if it were the equivalent of a jury verdict, and this all occurred before the "Report" was even written.

Id.

These "allegations" fail for three reasons. First, they are so implausible that they cannot form the basis for a valid complaint. Second, the assertions—even if somehow true—fail to raise a RICO claim. Third, the allegations are barred by Texas's attorney immunity doctrine—which constitute an absolute bar on suits relating to actions taken in connection with representing a client in litigation.

A. Plaintiffs' Addendum, likes the Complaint, is too implausible to state a valid claim for relief.

Plaintiffs' Addendum, like the Complaint, fails to satisfy the plausibility requirements of Rule 12. It is also frivolous and delusional—a separate ground for dismissal.

1. Plaintiffs' Addendum fails to satisfy Rule 12.

Under Rule 12, to properly assert a well-pleaded complaint, Plaintiffs must plead enough facts "to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). Plaintiffs' claim is only "facially plausible" if they plead facts that allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Further, the Court is not bound to accept as true legal conclusions couched as factual allegations. *Id.* at 678–79 (holding that a complaint "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions"). And "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679.

Here, Plaintiffs' Addendum states only vague, speculative, and implausible allegations against Ms. Young that are insufficient to form the basis of a well-pleaded Complaint. Plaintiffs ask the Court to infer from the fact that Plaintiffs chose not to attend a hearing that the other attendees at the hearing conspired to fabricate the report of the temporary administrator.[1] The implausible leap that Plaintiffs ask this Court merely to assume is not permitted by Rule 12.

2. Plaintiffs' Addendum, like the Complaint, is frivolous and delusional.

As stated in Ms. Young's Motion to Dismiss, this Court has "inherent authority to dismiss a *pro se* litigant's frivolous or malicious complaint . . . ." *See Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at *4 (N.D. Tex. Oct. 25, 2010) ("District Courts have the

[1] *See, e.g.*, Addendum, DKT. 26, at ¶ 99 ("The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs . . . to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter.").

inherent authority to dismiss a pro se litigant's frivolous or malicious complaint *sua sponte* even when the plaintiff has paid the requiring filing fee."); *see also Neitzke v. Williams*, 490 U.S. 319, 325 & 328 (1989) (holding that a complaint is "frivolous" and should be dismissed when the factual allegations are "fanciful," "fantastic," or "delusional"). To determine "whether a plaintiff's complaint is frivolous, district courts must determine whether the facts alleged are 'clearly baseless,' meaning that the allegations are 'fanciful,' 'fantastic,' or 'delusional.'" *Campbell v. Brender*, 3:10-CV-325-B, 2010 WL 4363396, at *5 (N.D. Tex. Oct. 25, 2010) (citing *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992)).

Like in their Complaint, Plaintiffs' Addendum alleges a bizarre conspiracy theory where practicing litigants, attorneys, and judges plotted against Plaintiffs in open court, apparently making agreements designed to diminish the value of probate estates. Other courts in this Circuit have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See, e.g.*, *Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at *2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148 (W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff). The Addendum does nothing to remedy the fanciful allegations contained in the Complaint; it merely compounds the impropriety of Plaintiffs' delusions.

B. Plaintiffs' Addendum fails to state facts sufficient to assert a RICO claim against Ms. Young.

None of Plaintiffs' allegations against Ms. Young are sufficient to state a RICO claim.[2]

[2] As shown in Ms. Young's Motion to Dismiss, Plaintiffs have alleged numerous causes of action for which they have no private right of action. *See* Motion to Dismiss, DKT. 25, at pp. 13–15. The only cause of action they assert that they could actually pursue is their RICO claim.

First, none of the allegations actually assert that Ms. Young committed any wrongful act whatsoever. Instead, Plaintiffs complain of Ms. Young's retention as attorney for the temporary administrator. But the Plaintiffs have no right to dictate who the temporary administrator will retain as counsel.

And none of these allegations show that Plaintiffs have been injured by a violation of RICO. *See Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (holding that a RICO plaintiff must show he has standing to sue and that, to plead standing, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 459, 460 (2006) ("When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries.").

But most crucially, the Plaintiffs' Addendum still fails to assert the "pattern of racketeering activity," that is required to allege a RICO claim. *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). The only assertion made in the Addendum against Ms. Young is that she somehow conspired *with the Probate Court itself* to act as attorney to a temporary administrator who submitted a false report. *See* Addendum, at ¶¶ 97, 99, and 107. This is not a "pattern of racketeering activity." *Abraham v. Singh*, 480 F.3d 351, 355 (5th Cir. 2007) (holding that racketeering activity must "consist[] of two or more predicate criminal acts" listed in 18 U.S.C. § 1961(1)).

And even if Plaintiffs' fallacious assertions were true, Plaintiffs allege nothing more than the "garden-variety tort" of common law fraud, which is insufficient to state a RICO claim. *See St. Germain v. Howard*, 556 F.3d 261, 263 (5th Cir. 2009) (holding plaintiffs pled facts showing nothing more than "violations of the rules of professional responsibility," not "the requisite

predicate *criminal* acts under RICO"); *Fleet Credit Corp. v. Sion*, 893 F.2d 441, 445 (1st Cir. 1990) ("[A]cts of common law fraud that do not implicate the mails (or the wires) do not constitute 'racketeering activity'").

C. Plaintiffs' Addendum cannot avoid Texas's attorney immunity doctrine.

Finally, Plaintiffs' Addendum makes no difference because Plaintiffs still cannot avoid the effect of Texas's attorney immunity doctrine. Under Texas law, "attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)).

Here, the only facts alleged by Plaintiffs relate to conduct Plaintiffs allege occurred when Ms. Young was acting as attorney for Temporary Administrator Lester. *See* Addendum, at ¶¶ 96, 97, 99, and 107. And "[e]ven conduct that is 'wrongful in the context of the underlying suit' is not actionable if it is 'part of the discharge of the lawyer's duties in representing his or her client.'" *Id.* (quoting *Toles v. Toles*, 113 S.W.3d 899, 910-11 (Tex. App.—Dallas 2003, no pet.)). And a plaintiff cannot evade attorney immunity by simply "labeling an attorney's conduct 'fraudulent.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406). Instead, the only exceptions to an attorney's "true immunity from suit" are if an attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Byrd*, 467 S.W.3d at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)).

Here, there are no allegations that Ms. Young engaged in any conduct that was "entirely foreign to the duties of an attorney." *Id.* at 482. Nor do Plaintiffs allege Ms. Young was

engaging in conduct that did not involve the provision of legal services. *Id.* Thus, Plaintiffs' Addendum makes no difference, and this suit against Ms. Young should be dismissed.

III. Conclusion

For the reasons stated above, this Court should strike the Plaintiffs' Addendum. In the alternative, Plaintiffs' Addendum does not change the merits of Ms. Young's Motion to Dismiss, and the Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: October 3, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF CONFERENCE

I certify that on October 3, 2016, I conferred with Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to withdraw the Addendum, requiring the submission of this Motion to the Court.

/s/ Robert S. Harrell
Robert S. Harrell

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document has been served on October 3, 2016, in accordance with the Federal Rules of Civil Procedure.

/s/ Robert S. Harrell
Robert S. Harrell

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT NEAL SPIELMAN'S MOTION TO DISMISS

Defendant Neal Spielman ("Spielman") files this Motion to Dismiss seeking the dismissal of all claims asserted by Plaintiffs against him. In support thereof, Defendant would respectfully show the Court the following:

I.
SUMMARY OF THE ARGUMENT

This case stems from "conspiracy" claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs "claims," which are nearly incomprehensible are nothing more than incredible conspiracy theories suggesting that the Harris County Probate Court is the home of a nefarious, shadowy syndicate with designs on stealing "familial wealth." The Plaintiffs Original Complaint has alleged Spielman and other Defendants for (1) violations of the Racketeer Influence Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962(c) and conspiracy to violate the same; (2) conspiracy to commit Honest Services Fraud, 18 U.S.C. § 1346; (3) conspiracy to commit Mail Fraud, 18 U.S.C. § 1341; (4) conspiracy to commit Wire Fraud, 18 U.S.C. § 1343; (5) Hobbes Act Extortion 15 U.S.C. §1951(b)(2); (6) conspiracy to obstruct justice, 18 U.S.C.

§371; and state law theft, Texas Penal Codes 31.02 & 31.03. Despite the litany of allegations, Plaintiffs have failed to plead any facts suggesting any wrongdoing by Spielman. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not "plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"). For this reason, Plaintiffs' Original Complaint against Spielman should be dismissed with prejudice.

II.
BACKGROUND

Plaintiffs' suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, *Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.*, ("the Probate Matter"). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents' estate. Rather than litigate their claims in the proper forum—Probate Court No. 4—Plaintiffs have filed this suit, naming every person remotely involved with the Probate Matter—including the judge, court personnel, Defendant Spielman, and "99 Jane and John Does"—in an apparent attempt to avoid participating in the court-ordered mediation in the Probate Matter.[1]

Spielman is attorney of record for Amy Brunsting in the Probate Matter. *See* Plaintiffs' Verified Complaint for Damages. Plaintiffs appear to have asserted only one claim specifically against Spielman: that Spielman "obstructed justice" by assenting to the postponement of a summary judgment hearing, somehow depriving Curtis access to the courts and other due process rights. *See* Plaintiffs' Verified Complaint for Damages ¶131. Besides this one specific act, the remainder of Plaintiffs' allegations against Spielman consists of unintelligible and boilerplate criminal "conspiracy" claims and allegations against all Defendants. Without

[1] In the Plaintiffs' Verified Complaint for Damages, Plaintiff Curtis has characterized the pending mediation of the probate matter as "predetermined by the personal interests of enterprise acolytes and not by law." *See* ¶¶ 113-115.

anything more, the Plaintiffs have not pleaded facts to support a claim for relief, nor can their claims be cured through a new pleading. Therefore, the Court should dismiss this claim with prejudice. *Caroll v. Fort James Corp.* 470 F.3d 1171, 1177 (5th Cir. 2006).

III.
ARGUMENTS AND AUTHORITIES

A. Plaintiffs' Claims Are Barred by "Attorney Immunity" Doctrine.

Plaintiffs' claims should be dismissed pursuant to the "Attorney Immunity Doctrine". *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) ("[A]ttorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation."). More so, in Texas, "attorney immunity is properly characterized as a true immunity from suit." *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346-48 (5th Cir. 2016). This immunity "not only insulates the [attorney] from liability, but also prevents the [attorney] from being exposed to discovery and/or trial." *Id.* At 346. The only exceptions to attorney immunity is if the attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduction "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Byrd*, 467 S.W.3d at 482.

It is undisputed fact that Spielman was acting at all times as the attorney for Amy Brunsting. In Plaintiffs' Verified Complaint for Damages, they state "[d]efendant Amy Brunsting is proximately related to Harris County Probate Court . . . **through her attorney, Defendant Neal Spielman** and co-conspirator Defendant Candace Kuntz-Freed." *See* ¶ 27 (emphasis added). The facts the Plaintiffs allege as forming the basis of her claims against Spielman arise from the discharge of Spielman's duties in representing Amy Brunsting. There are no allegations in the Plaintiffs' pleadings that would suggest Spielman's conduct fell into any

exception to the attorney immunity doctrine. Thus, as Spielman's conduct is immune from suit, Plaintiffs' claims must be dismissed.[2]

B. Plaintiffs' Claims Should be Dismissed Pursuant to Federal Rule 12(b)(6) for Failure to State a Claim.

The remainder of Plaintiffs' claims against Spielman should be dismissed because the Complaint fails to allege facts supporting any valid claims for relief. Plaintiffs complaints are simply conclusory allegations of law, inferences unsupported by facts, or formulaic recitations of elements. These types of complaints are not sufficient to defeat a 12(b)(6) motion. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim should be dismissed as implausible if it does not plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged").

In order to defeat a Rule 12(b)(6) motion, Plaintiffs must plead enough facts to "state a claim to relief that is **plausible on its face**." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A claim is "facially plausible" if the facts plead allow the court to draw reasonable inferences about the alleged liability of the defendants. *Id.* Here, the Plaintiffs' allegations facially fail to meet this standard. In the RICO complaint against Spielman, Plaintiffs allege simply:

> **[Spielman and others] did at various times unlawfully, willfully and knowingly combine, conspire and agree with each other to violate 18 U.S.C. Section 1962(c), by participating, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple predicate acts within the meaning of 18 U.S.C. §1961(1) in violation of 18 U.S.C. §1962(c) and (d) to wit[].**

Plaintiffs' Verified Complaint for Damages, ¶59.

---

[2] Alternatively, Plaintiffs' claims are barred by lack of attorney-client privity. Barcelo v. Elliott, 923 S.W.2d 575, 577 (Tex. 1996).

Each of the Plaintiffs claims against Spielman follow the same formulaic pattern. *See* ¶¶ 121, 122, 124, 131, 132, 139. As the Plaintiffs' claims have not met the "fair notice" pleading standards Rule 12(b)(6), these claims should be dismissed.

C. Plaintiffs' Fail to Plead Particular Acts of Fraud.

Federal Rule 9(b) requires a heightened pleading standard when the claims allege acts of fraud. *See* FRCP 9(b). The Federal Rules requires plaintiffs to plead allegations of fraud "with particularity." *ABC Arbitrage Plaintiffs Grp. V. Tchuruk*, 291 F.3d 336, 350 (5th Cir. 2002) (to satisfy the particularity standard, a party must "specific the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent") (internal quotations and citations omitted). The Plaintiffs plead, *inter alia*, that Spielman was part of an over-arching conspiracy, (referred to alternatively as "the Enterprise," the "Harris County Tomb Raiders," the "Probate Mafia", and the "Probate Cabal") whose purpose was to commit acts of fraud to "judicially kidnap and rob the elderly, our most vulnerable citizens of their freedom, dignity, fundamental human and civil rights and property accumulated throughout a lifetime, often also robbing heirs and beneficiaries of familiar relations and inheritance expectancies." *See* Plaintiffs' Verified Complaint for Damages ¶¶ 59-71. As these pleadings require the heightened standard, Plaintiff's allegations are facially insufficient and should be dismissed.

D. Plaintiffs' Fail to Plead Particular Conduct of the Defendant.

The pleading requirements under the Rule 9(b) also require that claimants allege specific and separate allegations against each defendant. *See Unimobil 84, Inc. v. Spurney,* 797 F.2d 214, 217 (5th Cir. 1986)(affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made"). It is "impermissible to make general allegations that

lump all defendants together, rather, the complaint must segregate the alleged wrongdoing of No. 1 from another."). *In re Parkcentral Glob. Litig.,* 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012).

Here, Plaintiffs' complaints consist of generalized allegations concerning "conspiracies" and "enterprises." The claims do not differentiate between what acts each member committed nor what role each defendant played. Nothing in the pleadings is informative enough to prepare a proper defense. Without discernible, specific acts alleged against the Defendants, the Plaintiffs have failed to meet the pleading standards required by the Federal Rules.

E. Plaintiffs Lack Privity With Defendant Spielman to Maintain a Suit.

Plaintiff's claims against Spielman arise from his role as an attorney for Amy Brunsting. Texas law dictates that an attorney only owes a duty of care to a person with whom the attorney has a professional attorney-client relationship. *Barcelo v. Elliott*, 923 S.W.2d 575, 577 (Tex. 1996). A non-client may not maintain a suit for the negligence of another's attorney. *See Gillespie v. Scherr*, 987 S.W.2d 129 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). Spielman and Plaintiffs have never had an attorney-client relationship; the Plaintiffs themselves do not dispute this fact. Without a relationship of "privity" between the attorney and the claimants, the claimant is not a proper party to sue. The rationale between the "privity" required to obtain standing is, that without it, attorneys would be subject to endless liability. *Barcelo*, 923 S.W.3d at 577. Texas has uniformly applied the doctrine of a "privity barrier" in estate planning contexts. *Id.* At 579.

Because Spielman and Plaintiffs never had an attorney-client relationship, nor do Plaintiffs allege an attorney-client relationship existed, they do not have standing to sue Spielman. Therefore, the Plaintiffs' claims must be dismissed.

IV.
CONCLUSION

For the reasons stated above, Defendant Neal Spielman requests that this Court grant Defendant's Motion to Dismiss on all claims with prejudice.

Respectfully submitted,

WINGET, SPADAFORA, & SCHWARTZBERG, L.L.P.

By: _____

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record through the Court's CM/ECF system on this date: October 3, 2016.

_____
Martin S. Schexnayder

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT NEAL SPIELMAN'S MOTION TO DISMISS BASED ON LACK OF SUBJECT MATTER JURISDICTION

Defendant Neal Spielman ("Spielman") files this Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) seeking the dismissal of all claims asserted by Plaintiffs against him. In support thereof, Defendant would respectfully show the Court the following:

I.
SUMMARY OF THE ARGUMENT

This case stems from "conspiracy" claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs' "claims," which are nearly incomprehensible are nothing more than incredible conspiracy theories suggesting that the Harris County Probate Court is the home of a nefarious, shadowy syndicate with designs on stealing "familial wealth." The Plaintiffs' Original Complaint has alleged Spielman and other Defendants for (1) violations of the Racketeer Influence Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962(c) and conspiracy to violate the same; (2) conspiracy to commit Honest Services Fraud, 18 U.S.C. § 1346; (3) conspiracy to commit Mail Fraud, 18 U.S.C. § 1341; (4) conspiracy to commit Wire Fraud, 18 U.S.C. § 1343; (5) Hobbes Act Extortion 15 U.S.C. §1951(b)(2); (6) conspiracy to obstruct justice, 18 U.S.C.

§371; and state law theft, Texas Penal Codes 31.02 & 31.03. Despite the litany of allegations, Plaintiffs have failed to plead any facts which would impart standing upon the Plaintiffs. *See Lujan v. Defenders of Wildlife*, 504 U.S. 559 (1992) (holding that plaintiff lacked standing where the failed to allege "imminent" injury-in-fact). For this reason, Plaintiffs' Original Complaint against Spielman should be dismissed with prejudice.

II.
BACKGROUND

Plaintiffs' suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, *Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.*, ("the Probate Matter"). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents' estate. Rather than litigate their claims in the proper forum—Probate Court No. 4—Plaintiffs have filed this suit, naming every person remotely involved with the Probate Matter—including the judge, court personnel, Defendant Spielman, and "99 Jane and John Does"—in an apparent attempt to avoid participating in the court-ordered mediation in the Probate Matter.[1]

Prior to landing in Probate Court, Plaintiff Curtis first attempted to bring the claims that form this basis of the instant suit in federal court. In that suit, Cause No. 4:12-cv-00592, in the Southern District of Texas, Plaintiff made similar allegations as alleged in the present complaint, namely: conspiracy, fraud, elder abuse, undue influence, false instruments, breach of fiduciary duty, tortious interference with fiduciary obligations, among others. Ultimately, **at Plaintiff Curtis' request** the case was remanded to the probate proceeding in Probate Court No. 4, where it remains pending. The claims pending in the Probate Matter contain substantially the same parties and issues.

[1] In the Plaintiffs' Verified Complaint for Damages, Plaintiff Curtis has characterized the pending mediation of the probate matter as "predetermined by the personal interests of enterprise acolytes and not by law." *See* ¶¶ 113-115.

Spielman is attorney of record for Amy Brunsting in the Probate Matter. *See* Plaintiffs' Verified Complaint for Damages. Plaintiffs appear to have asserted only one claim specifically against Spielman: that Spielman "obstructed justice" by assenting to the postponement of a summary judgment hearing, somehow depriving Curtis access to the courts and other due process rights. *See* Plaintiffs' Verified Complaint for Damages ¶131. Besides this one specific act, the remainder of Plaintiffs' allegations against Spielman consists of unintelligible and boilerplate criminal "conspiracy" claims and allegations against all Defendants. Without anything more, the Plaintiffs have not pleaded facts to support a claim for relief or that they even have standing to assert claims against Spielman. Therefore, the Court should dismiss this claim with prejudice. *Caroll v. Fort James Corp.* 470 F.3d 1171, 1177 (5th Cir. 2006).

III.
ARGUMENTS AND AUTHORITIES

Defendant Spielman moves to dismiss this complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. Plaintiffs have the burden of showing subject matter jurisdiction, and this Court must determine whether it has subject matter jurisdiction before addressing the merits of the complaint. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 104 (1998).

Plaintiffs Lack Proper Standing to Assert Their Claims.

A plaintiff will have standing to file suit if it can demonstrate (1) an "injury in fact"—a harm that is concrete and actual, not merely conjectural or hypothetical;[2] (2) causation between the injury and defendant's conduct, and (3) redressability by a favorable decision of the court. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Because these are not merely pleading requirements, but rather an indispensable part of the plaintiff's case, **each** element must be

[2] *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992).

supported in the same way as any other matter in which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at that stage of litigation. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 883-889 (1990).

Here, the Plaintiffs cannot provide proof of any of the required elements of standing. Plaintiffs cannot show any injury-in-fact from the conduct alleged in their Complaint. Nor is there a showing of causation between Spielman's conduct and any injury alleged by Plaintiffs.

Plaintiff Curtis' claims suggest that as a result of some action of Spielman, she has been deprived of the "enjoyment of her beneficial interests" as a beneficiary of the Brunsting Family Trust. *See* Plaintiffs Verified Complaint for Damages, ¶ 213. Plaintiff has not pleaded any facts that can demonstrate how any action of Spielman has injured her status as a beneficiary of the Brunsting Family Trust. Spielman has had no involvement in the drafting of estate planning documents in this matter. In fact, Curtis is still entitled to collect her share of the inheritance of the Brunsting Family Trust. More so, Texas has never recognized tortious interference with inheritance as a cognizable cause of action. *See Anderson v. Archer*, 03-13-00790-CV, 2016 WL 589017 (Tex. App.—Austin Mar. 2, 2016, no pet. h.) ("In short, we agree with the Amarillo Court of Appeals that 'neither this Court, the courts in *Valdez, Clark,* and *Russell*, nor the trial court below can legitimately recognize, in the first instance, a cause of action for tortuously interfering with one's inheritance.' We also agree with the Amarillo court's assessment that neither the Legislature nor Texas Supreme Court has done so, or at least not yet. Absent legislative or supreme court recognition of the existence of a cause of action, we, as an intermediate appellate court, will not be the first to do so.).

Plaintiff Munson's "injuries" are facially conjectural and hypothetical. Munson, who is neither a party to any of the prior lawsuits nor a beneficiary under the Brunsting Family Trust,

alleges that he has been "diverted away from other productive pursuits." *See* Plaintiffs Verified Complaint for Damages, ¶ 216. Without a demonstration of concrete, actual harm, his claims—like Curtis's claims—must fail, and Plaintiffs' claims should be dismissed.

IV.
CONCLUSION

For the reasons stated above, Defendant Neal Spielman requests that this Court grant Defendant's Motion to Dismiss on all claims with prejudice.

Respectfully submitted,

WINGET, SPADAFORA, & SCHWARTZBERG, L.L.P.

By: _____

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record through the Court's CM/ECF system on this date: October 3, 2016.

_____
Martin S. Schexnayder

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' ANSWER TO DEFENDANT JILL WILLARD YOUNG'S MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6) AND 9(B)

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Introduction

1. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 14, 2016, Defendant Jill Willard Young filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 25)

3. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26)[1] as a factual supplement to the RICO complaint. (Dkt 1).

4. Plaintiffs move the Court to take judicial notice, pursuant to Federal Rule of Evidence 201, that the Addendum of Memorandum (Dkt 26) and the exhibits attached thereto and referred to therein, are docket entries 115 through 120 in closely related Case 4:12-cv-0592. (See NOTICE of Related Case this Court's Docket (Dkt 12))

5. Plaintiffs hereby incorporate by reference the "Standards of Review", "Contextual Summary", "History of the Controversy", and "History of the Litigation" (Dkt 33 sections I, II, III and IV) from Plaintiffs' response to the Motions to Dismiss filed by Defendants Vacek & Freed (Dkts 19 & 20) as if fully restated herein.

The Issues

a. Defendant Jill Willard Young claims:

> *Plaintiffs' allegations appear to relate to a probate matter in Harris County Probate Court, which the Plaintiffs call "Curtis v. Brunsting" (see Complaint ¶ 110), although no cause number is ever mentioned and no court is ever identified.*

b. Defendant claims:

> Plaintiffs fail to plead facts sufficient to satisfy Rule 9(b)

c. Defendant Claims:

> *In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.*

d. Defendant claims Plaintiffs' Complaint reads more like "an excerpt from the DaVinci Code, rattling off fantastical assertions with no connection to plausible facts or valid causes of action".

[1] Case 4:12-cv-0592 Filed TXSD August 3, 2016 docket entry's 115, 117, 119, 120

e. Defendant takes exception to the descriptive labels acquired by plaintiffs as terms given to the complained of conduct by ordinary laypersons who have previously experienced the probate court version of the administration of justice.

f. Jill Willard Young claims that her only connection to Plaintiff Curtis involved the "estate of Nelva Brunsting".

> *The only matter in which Ms. Young was ever involved with Plaintiff Curtis was In re: Estate of Nelva E. Brunsting, No. 412.249 (Harris County Probate Court No. 4) (the "Brunsting matter"). In the Brunsting matter, Ms. Young was attorney for Greg Lester, who had been appointed by Probate Court No. 4 as temporary administrator, to assist Mr. Lester in preparing a written report to the Court.*

g. The Motion then says:

> *All of the actions taken by Ms. Young in that matter were in her role as attorney to Mr. Lester. Ms. Young never had a fiduciary relationship with either Plaintiff, and she did not represent any other party in the Brunsting matter. Plaintiffs make no allegations to the contrary.*

h. Ms. Young then claims immunity.

> *Plaintiffs' claims should be dismissed with prejudice. First, Ms. Young, as attorney only for Mr. Lester, is entitled to immunity from suit under Texas law. See Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477, 481 (Tex. 2015) ("[A]ttorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation.") (emphasis added).*

i. Ms. Young attaches as her only exhibit (Dkt 25-A) a copy of the Order appointing Gregory Lester Temporary Administrator for the "estate of Nelva Brunsting No 412249".

Plaintiffs' Argument

6. Defendant's Rule 12(b)(6) Motion attempts to offer a set of facts inapposite to those of the complaint and although Defendant may offer a different view of the facts under Federal Rule of Civil Procedure 12(b)(1) by providing affidavits and other evidentiary support, Defendant has not done so and may not do so in a Rule12(b)(6) motion.

7. Ms. Young is charged with in-concert aiding and abetting for her role in manufacturing a vacuously fraudulent report as part of an extortion conspiracy with a primary objective of stealing assets from the Brunsting trusts under an estate litigation pretext.

8. The Privity and Texas Attorney Immunity Doctrines are regularly used as shields for the criminal racketeering alleged in the RICO complaint.

Curtis v. Brunsting in the Southern District of Texas and the Fifth Circuit

> *Plaintiffs' allegations appear to relate to a probate matter in Harris County Probate Court, which the Plaintiffs call "Curtis v. Brunsting" (see Complaint ¶ 110), although no cause number is ever mentioned and no court is ever identified.*

9. Defendant Jill Willard Young, participated in the attempt to eliminate Curtis v Brunsting from the probate record. There is a reason for that. Plaintiffs' certificate of closely related case (Dkt 12) cites to the first filed lawsuit relating to the Brunsting trusts. Other than the case in point, 4:16-cv-01969, Curtis v Brunsting 4:12-cv-0592 is the only related lawsuit filed in a court of competent jurisdiction, as hereinafter more fully appears.

10. The events leading up to this RICO lawsuit are unique, in that the underlying unresolved federal lawsuit, Curtis v Brunsting 4:12-cv-592, is its own federal Fifth Circuit case law authority, *Curtis v Brunsting 704 F.3d 406*. The only real distinctions between Curtis v Brunsting 4:12-cv-592 and Curtis v Kunz-Freed et al., 4:16-cv-01969, are location in the chronology of events, the nature of the federal jurisdiction invoked, the number of actors involved, the volume of information available, and the remedies pursued.

11. Candace Louise Curtis v. Anita and Amy Brunsting 4:12-cv-592 was filed in the United States District Court for the Southern District of Texas on February 27, 2012, and dismissed sua sponte under the probate exception to federal diversity jurisdiction on March 8, 2012. Curtis filed a timely notice of appeal and the matter went to the Fifth Circuit for review.

12. On January 9, 2013, the Circuit Court issued a unanimous opinion with Order for Reverse and Remand, No. 12-20164, holding the probate exception to federal diversity jurisdiction does not apply to an inter vivos trust not in the custody of a state court, Curtis V. Brunsting 704 F.3d 406.

13. *On January 29, 2013,* Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court, raising claims exclusively related to the Brunsting trusts then in the custody of the federal court.[2]

14. Upon returned to the U.S. District Court Curtis immediately petitioned for a protective order. A hearing was held April 9, 2013 (Dkt 26-7 E289-E342) and an injunction was issued. (Dkt 26-2 E5-E9)

15. Also on April 9, 2013, after the federal injunction was issued, Defendant Bobbie Bayless filed suit in the Harris County Probate Court advancing Brunsting trust related claims similar to those already pending in the federal Court, styled "Carl Henry Brunsting individually and as Executor for the Estates of Elmer and Nelva Brunsting". (Dkt 33-9 E188-E207)

16. The Probate cases are:

a. Harris County Probate Case 412248 Carl Henry Brunsting executor of the estate of Elmer H. Brunsting, vs Amy, Anita and Carole Brunsting, filed April 9, 2013.

b. Harris County Probate Case 412249 Carl Henry Brunsting executor of the estate of Nelva E. Brunsting, vs Amy, Anita and Carole Brunsting, filed April 9, 2013.

[2] No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County, TX

c. Harris County Probate Case 412249-401 Carl Henry Brunsting Individually vs Amy, Anita and Carole Brunsting, filed April 9, 2013.

d. Harris County Probate No. 412249-402 on remand from the federal Court 4:12-cv-0592. The only docket entries in the probate court with the heading of Curtis v Brunsting are a notice of the original federal petition[3] and a notice of injunction and report of special master[4] and each is covered with a heading page of "Estate of Nelva Brunsting".

The Losing End of Fully Litigated Determinations in Texas State Court

17. Defendant alleges Plaintiffs' claims are:

> *frivolous, delusional, and implausible"… bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.*

18. Counsel violates ethics rules when he files a pleading making knowingly disingenuous claims regarding the record of state court proceedings. Defendants do not, because they cannot, point to the record in any proceeding where Plaintiffs have been on the losing end of any fully litigated state court determinations, because no such events exist in the record. There is a plausible explanation for that.

19. The state probate court absolutely refused to resolve any substantive issues on the merits, due to their awareness of a well-known phenomenon called "Complete Absence of Jurisdiction".

20. Defendant's knowledge of that simple fact explains the entire in-concert attempt to avoid ruling on the merits of any pleading and the character of the Gregory Lester Report.

[3] 2015-02-10 PBT-2015-47716
[4] 2015-02-06 PBT-2015-47630

21. Defendant would love to argue, as they do against all of the probate cabal's victims (Exhibit 1 attached), that Plaintiffs are disgruntled losers seeking vengeance, or that they are asking a federal court to review state court judgments when, in fact, no rulings were ever entered against Curtis because no state court has been invoked as a "Court of Competent Jurisdiction" and these defendant legal professionals all know it.

The Vacuously Indefensible Report of Jill Willard Young and Gregory Lester

The Order Granting Authority to Retain Counsel

22. The Order granting authority to retain Jill Young (Exhibit 2 attached) was for the sole purpose of performing the Duties defined in the Order appointing Gregory Lester Temporary Administrator. (Dkt 25-A)

> *as Counsel for Applicant, to perform such legal services on behalf of the Estate as are necessary and reasonable, including assisting Applicant in carrying out his fiduciary responsibilities.*

23. The Report of Temporary Administrator, filed January 14, 2016, (Dkt 26-9) never mentions the Wills of Elmer or Nelva Brunsting, which is where one would logically think to begin an honest investigation into the veracity of claims brought in the name of a "decedent's estate". The Wills (Exhibits 3 and 4 attached) make clear that the only heir in fact to either estate is "the trust", a matter commented on in the Fifth Circuit Opinion. (Dkt 34-4)

24. The "Report" does not give a history of any litigation, does not mention the estate of Elmer Brunsting, Harris County Probate No. 412248 (Will filed April 2, 2012), does not mention the estate of Nelva Brunsting, Harris County Probate No. 412249 (Will filed April 2, 2012), even though the Report is filed under the 412249 case number and the Order (Dkt 25-A) specifically authorized investigation and reporting on the efficacy of the "estate" claims.

a. The "Report" also does not mention the Petition in Curtis v Brunsting 4:12-cv-00592, or Curtis v Brunsting 704 F.3d 406, or the 164th Judicial District Court of Harris County No. 2013-05455 "estate of Nelva Brunsting" v Candace Kunz-Freed and Vacek and Freed, or that Carl Brunsting brought his complaint individually and as executor of the estates of Elmer and Nelva Brunsting in the probate Court, nor that the estate claims are virtually identical to those that had been pending in the Southern District of Texas since February of 2012.

b. The "Report" does not mention the federal injunction, does not mention the gap in activity in the "estate cases between April 5, 2013's "Drop Orders" (Exhibits 5 and 6), the Inventory (Exhibit 7 attached), or the federal remand of May 2014 (Dkt 33-7 and 33-8), or the applications for letters dated October 17, 2014 (Exhibit 8 attached).

c. The "Report" does refer to Jason Ostrom's alleged "2nd Amended Complaint" filed in the probate court under the heading of "Estate of Nelva Brunsting". (Dkt 34-9)

25. Plaintiffs would again ask the Court to review Dkt 34-10 which is credible evidence of "bizarre" that actually exists, although the signed version appears to have been replaced with the unsigned version in the public record.[5] (Exhibit A9 attached)

Defendant's Exhibit A

26. Defendant's Exhibit A (Dkt 25-A) is the Order Appointing Temporary Administrator Gregory Lester. In the Order the Probate Court found that it had jurisdiction and venue over the Decedent's Estate and authorized Mr. Lester to review the claims brought by the "estate" against 1) Candace Freed 2) Anita Kay Brunsting, 3) Amy Ruth Brunsting, and 4) Carole Ann Brunsting. The Order does not grant any authority to examine the claims brought by Plaintiff Carl Brunsting or Plaintiff Candace Curtis individually. None-the-less the report states:

[5] Harris County Clerk public website case access

> *Carl Henry Brunsting and Candace Louise Curtis have filed claims against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting in the Estate of Nelva E. Brunsting, Deceased, pending in Harris County Probate Court Number Four (4) under Cause Number 412,249 (hereinafter referred to as the "Probate Court Claims").*

27. While the "Report" specifically avoids any mention of the TXSD case of Curtis v Brunsting 4:12-cv-00592, it exhibits the Report of the Special Master with the federal case number listed across the top of every page referring to it thusly:

> *"This **REPORT OF MASTER** that was prepared in the case filed in the Southern District of Texas federal court case has the details of the Trust's income, expenses and distributions of stock. A copy of this report is attached hereto as the sixth exhibit."*

28. The only exhibits in the "Report" are trust and not estate related instruments and there can be no plausible denial that the "Report" was nothing but a vehicle for threatening Plaintiff Curtis with injury to property rights if she did not agree to enter into a mediated settlement agreement. (See Dkt 26 pgs 3-31 and transcript of March 9, 2016 Dkt 26-16)

29. The Report exhibits include:

a. The 2005 Restatement to the Brunsting Family inter vivos trust, Pg 11-97;

b. The 2007 Amendment to the Brunsting Family inter vivos trust, Pg 98-99;

c. The alleged December 21, 2010 appointment of successor trustees to the Brunsting Family inter vivos trusts, Pg 100-105;

d. The June 2010 QBD to the Brunsting Family inter vivos trust, Pg 106-108;

e. One of three versions of the 8/25/2010 QBD (extortion instrument) claiming to revoke the Brunsting Family inter vivos trust (see dkt 26-4)[6], Pg 109-145 and;

f. Report of Special Master regarding the Brunsting Family inter vivos trust, Pg 146-183.

[6] Filed in the state probate court as an exhibit to Plaintiff Curtis July 13, 2015 Answer to Defendants 6/26/2015 No-evidence Motion and demand to produce evidence in 412249-401.

Probate Mafia and Harris County Tomb Raiders

30. Plaintiff Curtis' original petition filed February 27, 2012, was dismissed under the probate exception and that is what sent Plaintiff on a journey to the Fifth Circuit. Anyone researching the Probate Exception will invariably be exposed to the "Probate Mafia". (Exhibit 10 attached)

31. Harris County Tomb Raiders is a term first observed by Plaintiffs in a recorded video of a hearing before the Texas Senate Committee on the Judiciary, October 11, 2006[7], where one witness, a Robert Alpert[8], gave an account of his experience in the Harris County Probate Court. His testimony contained remarkably similar descriptions of the means and methods complained of in the present complaint, a full ten full years later, and nothing appears to have changed. Where exactly Tomb Raiders was mentioned in the testimony Plaintiffs do not recall, as there are 12 recordings available and they cover a seven and one-half hour hearing session.

In Concert Aiding and Abetting

32. As previously stated, Ms. Young is charged with in concert aiding and abetting a conspiracy to loot the Brunsting trusts, that is fully documented on the Public record. A particular participant's part in the conspiracy does not have to be of great magnitude, but only a manifest part of the symphony of sound produced by the other instruments in concert.

33. The elements of aiding and abetting are 1) that the accused had specific intent to facilitate the commission of a crime by another; 2) That the accused had the requisite intent of the

[7] Audio Recordings are available online at the Texas Senate Library
[8] Beginning at 12 minutes of Recording: 791070a, 79th Senate Jurisprudence Committee E1.016 Tape 2 of 4 Side 1 & 2, 10/11/06 10:40am Recording: 791070b

underlying substantive offense; 3) That the accused assisted or participated in the commission of the underlying substantive offense; and 4) That someone committed the underlying offense.[9]

34. Defendant Jill Willard Young does not offer exhibits to support her proclaimed vision of the facts she proffers. She does not exhibit her motion for permission for Greg Lester to retain her law firm (Exhibit 11), nor the order appointing her to "assist" Mr. Lester (Exhibit 2) and definitely not the report she assisted Mr. Lester in producing (Dkt 26-9).

Prosecuting State and Local Corruption

35. All of the states and most local governments have criminal statutes or codes which criminalize various aspects of corruption.

36. While there is no federal statute which is aimed specifically at state and local corruption, there are three statutes which have been generally utilized by federal prosecutors to prosecute state and local officials for acts of corruption. They are the mail and wire fraud statute, the Hobbs Act, and the Racketeer Influenced and Corrupt Organizations Act ("RICO").

Hobbs Act – 18 USC §1951

37. The Hobbs Act, by its express language, makes it a crime to obstruct, delay, or affect commerce by robbery or extortion.

38. However, the statute, by a series of judicial decisions including a United States Supreme Court decision (*See*, *United States v. Evans*, 504 U.S. 255 [1992]), has been extended to cover practices best characterized as bribery. In that regard, all that has to be shown is that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts. This results in making the Hobbs Act similar to 18 USC

[9] United States Attorney's » Criminal Resource Manual » CRM 2000 - 2500 » Criminal Resource Manual 2401-2499 CRM 2474

§201, insofar as it covers bribery of a federal official. However, the statute would not cover mere receipt of gratuities, as under 18 USC §201, which is covered by the mail and wire fraud statutes.

39. While the Hobbs Act is limited to conduct that "obstructs, delays or affects interstate commerce [commerce between two or more states]," this requirement is hardly any requirement at all, since all that is needed is a small or practically negligible effect.

40. A Hobbs Act violation may serve as the foundation for RICO offenses.

Mail and Wire Fraud – 18 USC §§1341 (Mail), 1343 (Wire)

41. The mail and wire fraud statutes were enacted as anti-fraud statutes, designed to combat, as criminal, the common law crime of larceny by trick. Even though the statutes' terms do not specifically embrace corruption, they are extensively used to prosecute acts of public corruption.

42. For mail fraud, the prosecutor must prove only (a) a scheme to defraud, and (b) the mailing of a letter for the purpose of executing the scheme; and for wire fraud, the prosecutor must prove only (a) a scheme to defraud, and (b) the use of interstate wire communications in furtherance of the scheme. For purposes of the statute, the requisite mailing can be done through the postal service or a private carrier, and the requisite wire communications include radio transmissions, telephone calls and e-mails. Significantly, the requisite mailing or wiring need not itself contain any fraudulent information and may be entirely innocent. However, they must be shown to be at least a "step" in the scheme. (*Schmuck v. United States*, 489 U.S. 705, 712 [1989]).

43. With respect to the statutes' use in public corruption cases, a fraudulent scheme includes "a scheme . . . to deprive another of the intangible right of honest services." (18 USC

§1346). It is this definition which makes the statutes a flexible tool for prosecutors to prosecute public corruption at the state or local level.

44. A typical "honest services" corruption case arises in two situations. First, "bribery" where the public official was paid for a particular decision or action, which includes a pattern of gratuities over a period of time to obtain favorable action. Secondly, "failure to disclose" a conflict of interest, resulting in personal enrichment, which encompasses circumstances where the official has an express or implied duty to inform others of the official's personal relationship to the matter at hand, even though no public harm occurred or there was no misuse of office.

45. As to the "conflict of interest" situation, the basis for its condemnation is that "[w]hen an official fails to disclose a personal interest in a matter over which he has decision-making power, the public is deprived of its right either to disinterested decision making itself or, as the case may be, to full disclosure as to the official's potential motivation behind an official act." (*United States v. Sawyer*, 85 F3d 713, 724 [1st Cir. 1966]). Notably, a person who holds no public office but participates substantially in the operation of government, *e.g.*, a political party leader, may be subject to prosecution under an "honest services" theory. (*See, United States v. Margiotta*, 688 F.2d 108 [2d Cir. 1982]).

Federal Conspiracy Laws

46. Federal conspiracy laws rest on the belief that criminal schemes are equally or more reprehensible than are the substantive offenses to which they are devoted. The Supreme Court has explained that a "collective criminal agreement—[a] partnership in crime—presents a greater potential threat to the public than individual delicts. Concerted action both increases the likelihood that the criminal object will be successfully attained and decreases the probability that

the individuals involved will depart from their path of criminality."[10] Moreover, observed the Court, "[g]roup association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish. Nor is the danger of a conspiratorial group limited to the particular end toward which it has embarked."[11] Finally, "[c]ombination in crime makes more likely the commission of crimes unrelated to the original purpose for which the group was formed."[12] In sum, "the danger which a conspiracy generates is not confined to the substantive offense which is the immediate aim of the enterprise."[13] Congress and the courts have fashioned federal conspiracy law accordingly.[14]

Conclusion

47. Ms. Young drafted the motion asking to be appointed to "assist Mr. Lester in his fiduciary duties" (Exhibit 11 attached) and admits to participating in the production of the "Gregory Lester Report" (Dkt 26-9 E394-E403) but seeks to hide her participation in the conduct of the affairs of the enterprise as "attorney" conduct entitling Ms. Young to impunity.

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[10] *Iannelli v. United States*, 420 U.S. 770, 778 (1975), quoting *Callanan v. United States*, 364 U.S. 587, 593-94 (1961).
[11] *Id.*
[12] *Id.*
[13] *Id.*
There have long been contrary views, e.g., Sayre, *Criminal Conspiracy*, 35 HARVARD LAW REVIEW 393, 393 (1922)("A doctrine so vague in its outlines and uncertain in its fundamental nature as criminal conspiracy lends no strength or glory to the law; it is a veritable quicksand of shifting opinion and ill-considered thought"); *Hyde v. United States*, 222 U.S. 347, 387 (1912)(Holmes, J, with Lurton, Hughes 7 Lamarr, JJ.)(dissenting)("And as wherever two or more have united for the commission of a crime there is a conspiracy, the opening to oppression thus made is very wide indeed. It is even wider if success should be held not to merge the conspiracy in the crime intended and achieved"), both quoted in substantial part in Katyal, *Conspiracy Theory*, 112 YALE LAW JOURNAL 1307, 1310 n. 6 (2003)
[14] Federal prosecutors have used, and been encouraged to use, the law available to them, *Harrison v. United States*, 7 F.2d 259, 263 (2d Cir. 1925)("[C]onspiracy, that darling of the modern prosecutor's nursery"); *United States v. Reynolds*, 919 F.2d 435, 439 (7th Cir. 1990)("[P]rosecutors seem to have conspiracy on their word processors as Count I"); Chesney, *Terrorism, Criminal Prosecution, and the Preventive Detention Debate*, 50 SOUTH TEXAS LAW REVIEW 669, 684 (2009)("What options do prosecutors have in the terrorism-prevention scenario when [other charges] are unavailable for lack of evidence linking the suspect to a designated foreign terrorist organization? One possibility is conspiracy liability").

48. It necessarily follows that an independent report on the efficacy of the estate claims would have revealed a complete absence of jurisdiction over the very things the report speaks to.

49. Where there is no court of competent jurisdiction, there is no judge and no litigation, and consequently Defendant's immunity claims collapse under the weight of the complete absence of jurisdiction in any state court. (See Curtis v Brunsting 704 F.3d 406, 409-410 and Lexis HN 6)

50. All of the Defendants are accused of violating 18 U.S.C. 1962(c), which prohibits participation in the conduct of the affairs of an enterprise through a pattern of racketeering activity affecting interstate commerce, and 18 U.S.C. 1962(d), conspiracy to violate 18 U.S.C. 1962(c).

51. Jill Willard Young's participation is directly related to the fraudulent report of Gregory Lester, used to promote their substantive resolution avoidance and mediated settlement diversion scheme, which can only be explained by these Defendants' knowledge of the Court's complete want of jurisdiction.

52. Defendant Jill Willard Young was present at the September 10, 2015 hearing, that plaintiffs have been unable to obtain a transcript of.

53. However, Defendant Neal Spielman's March 9, 2016 diatribe, (Dkt 26-16) referring to the September 10, 2015 hearing, evidences the "Report" to be the product of the Defendants' own dictation and, while the report admits "I was told" as a source for information, The report never mentions who told Lester what to write.

54. These lawyer Defendants, in concert, attempted to conceal Curtis v. Brunsting in the probate record as if it was the "estate of Nelva Brunsting" and then, knowing there was no authority to determine any matters related to the Brunsting trusts they all conspired together to avoid rulings on the merits and to attempt to intimidate the non-participant into attending a

"mediation" where she could be further impressed with the threat to her property interests if she did not rollover on her rights and surrender property by settlement agreement.

55. Defendant attempts to deceive this Court into believing the underlying matter is related to an inheritance or an expectancy, but Plaintiff Curtis is an equitable property owner whose property interest was fully vested at the creation of the family trusts in 1996 and the death of Elmer Brunsting and Nelva Brunsting elevated her to a property owner with a primary right of consideration under the undisturbed terms of the irrevocable trusts.

56. Plaintiff Curtis' trust property has been withheld and that property continues to be illicitly held hostage to attorney fees and absolution ransoms Plaintiff does not owe.

57. Plaintiff Curtis and her domestic partner Plaintiff Munson have incurred substantial expense, expended efforts and suffered constant character attacks, been forced to divert quality time and capital assets away from local and domestic concerns in a productive life, to defend her property interests in Texas for more than 4 and one-half years, and the participants in the involuntary wealth redistribution scheme claim Plaintiffs have suffered no tangible injury.

58. Defendant also claims that some of the predicate acts do not provide a private right of claims, but that is not what 18 U.S.C. §1964(c) says about injury suffered as direct and proximate result of a pattern of racketeering activity involving such acts.

59. The only subject of the Jill Willard Young/Gregory Lester report is not the estate but the money cow trust, not properly in the custody of any state court.

60. There is not a single mention of the wills, the pour over provisions, the identity of the only heir, the inventory containing only an old car, or the "estate claims", and it does not mention the drop orders or any other "estate" related matters, yet seeks to legitimize "estate claims" involving only the beneficiaries of the "heir-in-fact" trust.

61. Candace Curtis and her siblings are beneficiaries of "the trust" and, therefore, derivatively the only real parties in interest.

62. In essence, the "decedent's estate" is suing "heirs in fact" (trust beneficiaries) in probate court, for trespasses committed against the "heir in fact" (trust) during the lifetime of the decedent.

63. Plaintiff Curtis' federal petition was amended by Defendant Ostrom to join Plaintiff Carl Brunsting, to pollute diversity, in order to affect a remand to state court, where Plaintiff Curtis could be consolidated as a "defendant" in the "estate" lawsuit involving only the trust.

64. Any award from the estate lawsuits would belong to the "heir in fact" (trust), minus attorney and appointee fees from years of litigation involving an estate with no assets, in a court with no subject matter jurisdiction, whose judgments would all be void ab initio and would in any event guarantee a successful reversal on appeal by either party, with no resolution in sight forever and ever, while Anita, Amy, and their attorneys hold disposition of the trust hostage.

65. This is indeed a bazaar conspiracy theory but it is not a box office thriller. It is a reality embedded in the public record and one need look no further than the public record for the evidence that supports Plaintiffs' claims.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Order denying the Motion to Dismiss filed by Defendant Jill Willard Young August 14, 2016. (Dkt 25)

Respectfully submitted, October 2, 2016.

/s/Candace L. Curtis
Candace L. Curtis

/s/Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on October 2, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/Candace L. Curtis
Candace L. Curtis

/s/Rik W. Munson
Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendant Jill Young in the above styled cause on September 14, 2016 (Docket entry 25) should be Denied.

It is SO ORDERED

_____ _____

Date

The Honorable Alfred H Bennet
United Stated District Judge

Exhibit List Jill Willard Young Rule 12 Motion

1-	Defendant Jill Willard Rule 11 Notice	E1-E8
2-	Order Granting Authority to retain Jill Young	E9-E10
3-	The Will of Nelva Brunsting	E11-E22
4-	The Will of Elmer Brunsting	E23-E34
5-	Drop Order 412249 April 4, 2013	E35
6-	Drop Order 412248 April 4, 2013	E36
7-	March 27, 2013 Inventory and April 4, 2013 Order Approving Inventory	E37-E44
8-	2013-10-17 Application for Letters Testamentary	E45
9-	Agreed Order to Consolidate “estate of Nelva Brunsting with “estate of Nelva Brunsting” (See Dkt 34-10)	E46-E49
10-	Fighting the Probate Mafia (2002)	E50-E119
11-	September 1, 2015 Application to Retain Jill Young	E120-E128

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September 27, 2016

Via Certified Mail
Return Receipt Requested and
Electronic Mail

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Re: Case No. 4:16-cv-01969, *Curtis, et al v. Kunz-Freed, et al.*

Dear Ms. Curtis and Mr. Munson:

Pursuant to Federal Rule of Civil Procedure 11(c)(2), we have enclosed a copy of a Motion for Sanctions by Defendant Jill Willard Young.

As set forth in the Motion for Sanctions, Ms. Young is seeking sanctions, including attorneys' fees, from you for the wrongful filing of the above action. We will file this Motion for Sanctions on Wednesday, October 19, 2016, unless your clients nonsuit their claims against Ms. Young with prejudice before that date.

Please let me know if you have any questions.

Very truly yours,

Robert S. Harrell

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17-20360.2362

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S MOTION FOR SANCTIONS

On July 5, 2016, Plaintiffs filed a frivolous, 64-page "Verified Complaint" consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law that are plainly insufficient to survive dismissal. On September 15, 2016, Defendant Young filed her Motion to Dismiss. And on September 27, 2016, Defendant Young sent Plaintiffs a letter, informing them that, in accordance with the safe-harbor procedure of Federal Rule of Civil Procedure 11, she would be filing this Motion for Sanctions on October 19, 2016, if Plaintiffs did not dismiss their Complaint against her with prejudice. But Plaintiffs have ignored Ms. Young's letter and Motions.

Plaintiffs' frivolous pleadings meaninglessly and wrongfully denigrate the reputation of Ms. Young, a prominent, hard-working Houston lawyer. Despite opportunities to nonsuit their meritless suit, Plaintiffs have refused to do so. Thus, Plaintiffs should be required to reimburse Ms. Young's attorney's fees pursuant to Federal Rule of Civil Procedure 11.

ARGUMENT AND AUTHORITIES

Filing a RICO action in federal court is not a proper substitute for appealing an unfavorable ruling, nor is it an appropriate means of seeking revenge against opposing and court-

appointed counsel. *See Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) ("[I]t should be noted that an attorney's responsibility to conduct a reasonable prefiling investigation is **particularly important in RICO claims**.") (emphasis added). Because the claims asserted by Plaintiffs are both legally and factually frivolous, Ms. Young should be awarded attorneys' fees and costs under Fed. R. Civ. P. 11.

I. The Rule 11 Standard

Under Fed. R. Civ. P. 11(b), by presenting the Court a signed pleading, an "unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1)-(3). "Compliance with these affirmative duties is measured as of the time that the document is signed." *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994). And whether a pleading meets this requirements is measured "by an objective, not subjective, standard of reasonableness under the circumstances." *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 873 (5th Cir. 1988).

"[I]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1); *see also* Fed. R. Civ. P. 11 Advisory Committee Notes ("Even though it is the attorney whose

signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client.").

II. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims.

Plaintiffs have ignored longstanding attorney immunity doctrines, have alleged six causes of action for which they have no private cause of action, and failed to plead facts showing even the most basic elements of their RICO "claim."

A. Plaintiffs ignore attorney immunity.

Plaintiffs have ignored long-established immunity doctrines that protect attorneys from suit by opposing parties and non-clients. Indeed, the affirmative defense of immunity is apparent on the face of the Complaint.

Under Texas law, it is settled that "attorneys are immune from civil liability . . . 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). The only exceptions to this rule of immunity are if an attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Id.* at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)). However, a plaintiff cannot evade attorney immunity by simply "labeling an attorney's conduct 'fraudulent.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406).

In this case, Plaintiffs have not pled any facts showing Ms. Young, who served as counsel for the Temporary Administrator in the underlying lawsuit, took any actions outside the normal discharge of her duties in representing her client. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016) (attorney's conduct in sending a letter, participating in discovery, and

communicating with SEC about client were "classic examples of an attorney's conduct in representing his client").

B. Plaintiffs plead claims for which there exists no private right of action.

Plaintiffs allege three causes of action for "honest services," along with causes of action for wire fraud, fraud under 18 USC § 1001, and violation of the Hobbs Act. *See* Complaint, at ¶¶ 121–123. But those are criminal causes of action that cannot be pursued by a private plaintiff. *See* Motion to Dismiss [DKT. 25], at pp. 13–16.

C. Plaintiffs' accusations are baseless and delusional.

Plaintiffs accuse Ms. Young of what can best be described as fictional acts--being a member of a secret society and "cabal" known as the "Harris County Tomb Raiders," which Plaintiffs also call "The Probate Mafia." *See, e.g.*, Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in "Poser Advocacy," supposedly an "exploitation opportunity" to "hijack" "familial wealth." *Id.* at ¶¶ 95–99. Not surprisingly, Plaintiffs do not even try to accompany their made-up story with supporting facts. The reality is unavoidable—their complaint is a bizarre, sophomoric attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Less fantastical efforts to concoct a federal claim against judges and opposing attorneys have been routinely dismissed. *See, e.g.*, *Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at *2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.) (dismissing RICO claims against probate judges, attorneys, and clerks for failure to plead a racketeering activity). And other courts in this Circuit have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at *2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148

(W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff).

Thus, Plaintiffs' allegations fail to satisfy Rule 11. Specifically, Plaintiffs' Complaint against Ms. Young—devoid of any allegation of actual wrongdoing—can only be brought for improper purposes, like harassment or to needlessly increase the cost of litigation. Plaintiffs' Complaint is in no way warranted by existing law, and Plaintiffs' contentions completely lack any sort of factual or evidentiary support. *See* Fed. R. Civ. P. 11(b)(1)-(3). Ms. Young has also specifically informed Plaintiffs multiple times of the legal defects in their Complaint and the authority showing Plaintiffs' arguments are meritless, both in Ms. Young's filing of her Motion to Dismiss and by serving this Motion for Sanctions on Plaintiffs twenty-one days before filing it with the Court. But Plaintiffs have refused to dismiss their Complaint against Ms. Young. This, too, means sanctions are necessary. *See also Taylor v. C.I.R.*, 350 Fed. Appx. 913, 915 (5th Cir. 2009) ("Sanctions on pro se litigants are appropriate if they were warned that their claims are frivolous and they were aware of 'ample legal authority holding squarely against them.'").

CONCLUSION

Plaintiffs have filed a frivolous and facially-deficient lawsuit, and Ms. Young respectfully requests that the Court require Plaintiffs and their attorneys to pay her attorneys' fees in defending this suit and pursuing the relief requested herein. *See* Ex. A, Aff. of Robert S. Harrell.

Dated: September 27, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF CONFERENCE

I certify that on September 27, 2016, I conferred with counsel for Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to dismiss the claims against Ms. Young, requiring the submission of this Motion to the Court.

/s/ Robert S. Harrell
Robert S. Harrell

CERTIFICATE OF SERVICE

I certify that on September 27, 2016, pursuant to Fed. R. Civ. 11(c)(2) and Fed. R. Civ. P. 5, I served copies of this Motion for Sanctions on Plaintiffs. I also certify that a true and correct copy of the above Motion for Sanctions has been served on October 19, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell

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DATA ENTRY
PICK UP THIS DATE

NO. 412,249

ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER GRANTING AUTHORITY TO RETAIN COUNSEL – MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP

BE IT REMEMBERED that on this day came on for consideration the Application of Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, in connection with the Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP, and the Court finding that due and proper notice of the Application has been given, finds that the Application should in all respects be granted, it is accordingly,

ORDERED, ADJUDGED and DECREED by the Court that Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain JILL W. YOUNG with the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP, who agrees to adhere to the billing standards set out in the court's standards for Attorney fees, as Counsel for Applicant, to perform such legal services on behalf of the Estate as are necessary and reasonable, including assisting Applicant in carrying out his fiduciary responsibilities. The fees payable to Jill Young shall be treated as expenses of the Temporary Administrator pending contest.

IT IS FURTHER ORDERED by the Court that GREGORY A. LESTER, Administrator of the of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP pursuant to the Texas Estates Code and this Court's Order.

SIGNED this 10 day of September, 2015.

Christine Butts
JUDGE PRESIDING

FILED
2015 SEP 11 AM 11:34
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

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APPROVED AS TO FORM:

MACINTYRE MCCULLOCH STANFIELD
& YOUNG, LLP

By:_____

JILL W. YOUNG
State Bar No. 00797670
Jill.Young@mmlawtexas.com
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(713) 572-2900
(713) 572-2902 (Fax)

ATTORNEYS FOR APPLICANT

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EXHIBIT 3 - 2012-122649

LAST WILL
OF
NELVA E. BRUNSTING

PROBATE COURT 4

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

Article I

My Family

I am married and my spouse's name is ELMER H. BRUNSTING.

All references to "my spouse" in my Will are to ELMER H. BRUNSTING.

The names and birth dates of my children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

Article II

Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

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PURPORTED WILL

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ESTATE OF ELMER H. BRUNSTING

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

Article III

Appointment of Personal Representative

I appoint ELMER H. BRUNSTING as my Personal Representative. In the event ELMER H. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

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Adoption

PURPORTED WILL

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to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law.

Article IV

Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

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PURPORTED WILL

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EXHIBIT 3 - 2 PAGES

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

Section D. Election, Qualified Terminable Interest Property

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for ELMER H. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which ELMER H. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless ELMER H. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of ELMER H. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of ELMER H. BRUNSTING, and this

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PURPORTED WILL

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provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

Section E. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

Section F. Elective Deductions

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

Article V

Service of the Personal Representative

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

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PURPORTED WILL

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Section A. Possession, Assets, Records

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

Section B. Retain Property in Form Received, Sale

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

Section C. Investment Authority

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

Section D. Power of Sale, Other Disposition

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

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Section E. Partial, Final Distributions

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

Section F. Partition, Undivided Interests

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

Section G. Accounting

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

Section H. Protection of Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

PURPORTED WILL

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contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

Section I. Consultants, Professional Assistance

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

Section J. Compensation

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section K. Documenting Succession

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

PURPORTED WILL

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EXHIBIT 2 - 2012-122649

Article VI

No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by ELMER H. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

Nelva E. Brunsting
NELVA E. BRUNSTING

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Copy

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SELF-PROVING AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared NELVA E. BRUNSTING, Kristi Brun and April Driskell, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said NELVA E. BRUNSTING, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament, and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testatrix that the said Testatrix had declared to them that the said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Nelva E. Brunsting
NELVA E. BRUNSTING

Kristi Brun
WITNESS

April Driskell
WITNESS

FILED
2012 APR -2 AM 8:36
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

Subscribed and sworn to before me by the said NELVA E. BRUNSTING, the Testatrix, and by the said Kristi Brun and April Driskell, witnesses, on January 12, 2005.

Charlotte Allman
Notary Public, State of Texas

CHARLOTTE ALLMAN
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
AUG. 1, 2005

PBT-2012-122649

PURPORTED WILL

17-20360.2382

UNOFFICIAL COPY

04032012:1010:60051

412249

PURPORTED WILL

The Vacek Law Firm, PLLC
11511 Katy Freeway, Suite 520
Houston, Texas 77079
(281) 531-5800

Case 4:16-cv-01969 Document 41-3 Filed in TXSD on 10/03/16 Page 12 of 12

Case 4:16-cv-01069 Document 41-4 Filed in TXSD on 10/03/16 Page 1 of 12

2016-51,521 / 2 / 3227453

LAST WILL

OF

PROBATE COURT 4

ELMER H. BRUNSTING

412218

I, ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

Article I

My Family

I am married and my spouse's name is NELVA E. BRUNSTING.

All references to "my spouse" in my Will are to NELVA E. BRUNSTING.

The names and birth dates of my children are:

Name	Birth Date
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

Article II

Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

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PBT-2012-122640

PURPORTED WILL

17-20360.2384

EXHIBIT 2

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

Article III

Appointment of Personal Representative

I appoint NELVA E. BRUNSTING as my Personal Representative. In the event NELVA E. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

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PURPORTED WILL

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EXHIBIT 3 PAGE 3 OF 12 PAGES

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law.

Article IV

Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

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PURPORTED WILL

17-20360.2386

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(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

Section D. Election, Qualified Terminable Interest Property

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for NELVA E. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which NELVA E. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless NELVA E. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of NELVA E. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of NELVA E. BRUNSTING, and this

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EXHIBIT 2

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

Section E. Special Election for Qualified Terminable Interest Property

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

Section F. Elective Deductions

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

Article V

Service of the Personal Representative

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

PBT-2012-122640

PURPORTED WILL

17-20360.2388

ESQUIRE DEPOSITION

Section A. Possession, Assets, Records

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

Section B. Retain Property in Form Received, Sale

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

Section C. Investment Authority

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

Section D. Power of Sale, Other Disposition

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

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EXHIBIT 2 - 2012-122640

Section E. Partial, Final Distributions

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

Section F. Partition, Undivided Interests

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

Section G. Accounting

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

Section H. Protection of Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

PBT-2012-122640

PURPORTED WILL

17-20360.2390

EXHIBIT

PBT-2012-122639

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

Section I. Consultants, Professional Assistance

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

Section J. Compensation

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

Section K. Documenting Succession

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

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EXHIBIT 2

Article VI

No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by NELVA E. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS. WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

Elmer H Brunsting

ELMER H. BRUNSTING

PBT-2012-122640

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PURPORTED WILL

17-20360.2392

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The foregoing Will was, on the day and year written above, published and declared by ELMER H. BRUNSTING in our presence to be his Will. We, in his presence and at his request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, ELMER H. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

WITNESS

Krysti Brull
11511 Katy Freeway, Suite 520
Houston, Texas 77079

WITNESS

April Driskell
11511 Katy Freeway, Suite 520
Houston, Texas 77079

FILED
2012 APR -2 PM 4:31
STAN STANART
COUNTY CLERK
HARRIS COUNTY, TEXAS

PURPORTED WILL

PBT-2012-122640

17-20360.2393

2005-05-2525

SELF-PROVING AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ELMER H. BRUNSTING, Kristi Brun and April Duske, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said ELMER H. BRUNSTING, Testator, declared to me and to the said witnesses in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testator that the said Testator had declared to them that the said instrument is his Last Will and Testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Elmer H Brunsting
ELMER H. BRUNSTING

Kristi Brun
WITNESS

April Duske
WITNESS

Subscribed and sworn to before me by the said ELMER H. BRUNSTING, the Testator, and by the said Kristi Brun and April Duske, witnesses, on January 12, 2005.

Charlotte Allman
Notary Public, State of Texas

CHARLOTTE ALLMAN
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
AUG. 1, 2006

PBT-2012-122640

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PURPORTED WILL

17-20360.2394

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412248

PURPORTED WILL

The Vacek Law Firm, PLLC
11511 Katy Freeway, Suite 520
Houston, Texas 77079
(281) 531-5800

Case 4:16-cv-01969 Document 41-4 Filed in TXSD on 10/03/16 Page 12 of 12

17-20360.2395

04052013 1322:P015

DROP

NO. 412.249

PROBATE COURT 4

IN THE ESTATE OF Nelva E. Brunsting	§	IN THE PROBATE COURT
	§	NUMBER FOUR OF
DECEASED	§	HARRIS COUNTY, TEXAS

DROP ORDER

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

IT IS THEREFORE ORDERED that the Clerk drop said estate from the Court's active docket.

IT IS FURTHER ORDERED that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts

JUDGE CHRISTINE BUTTS
PROBATE COURT NO. FOUR

FILED
2013 APR -5 AM 10:01
STAN STANART
COUNTY CLERK
HARRIS COUNTY, TEXAS

UNOFFICIAL COPY

04052013 15:14:P0008

DROP

NO. 412248 **PROBATE COURT 4**

IN THE ESTATE OF Elmer H. Brunsting	§	IN THE PROBATE COURT
	§	NUMBER FOUR OF
DECEASED	§	HARRIS COUNTY, TEXAS

DROP ORDER

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

IT IS THEREFORE ORDERED that the Clerk drop said estate from the Court's active docket.

IT IS FURTHER ORDERED that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts
JUDGE CHRISTINE BUTTS
PROBATE COURT NO. FOUR

FILED
2013 APR -5 AM 10:01
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

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PROBATE COURT 4

2013-0227250 Page 1 of 2

NO. 412.249

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Date of Death: November 11, 2011

The following is a full, true, and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

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INVENTORY AND APPRAISEMENT

ASSETS	VALUE	ESTATE INTEREST

1. **Real Estate:**

   See List of Claims

2. **Stocks and Bonds**

   See List of Claims

3. **Mortgages, Notes and Cash:**

   See List of Claims

4. **Insurance Payable to Estate**

   See List of Claims

5. **Jointly Owned Property**

   See List of Claims

FILED
2013 MAR 26 PM 3:16
COUNTY CLERK
HARRIS COUNTY, TEXAS

Document 41-7 Filed in TXSD on 10/03/16 Page 2 of 8

ASSETS	VALUE	ESTATE INTEREST

6. Miscellaneous Property

6a. See List of Claims

6b. One-half (½) interest in
2000 Buick LeSabre..... $2,750.00
VIN--1G4HR54K3YU229418

TOTAL VALUE OF ESTATE..... Yet to be determined

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UNOFFICIAL COPY

LIST OF CLAIMS

1. Based upon the information currently available to the personal representative of the estate, it is not possible to determine with certainty what assets were in the estate at the Decedent's death. That determination will have to be made the subject of further judicial proceedings. After that judicial determination is made, to the extent it becomes necessary, this Inventory, Appraisement and List of Claims will be amended to reflect the descriptions and values of assets later determined to have been estate assets at the time of Decedent's death.

2. The estate has asserted a claim against Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC relating to actions taken and omissions made in the course of their representation of decedent and her husband which may result in additional estate assets. That case is pending under Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC,* in the 164th Judicial District Court of Harris County, Texas.

3. The Brunsting Family Living Trust was signed by Decedent and her husband on October 10, 1996 and was restated on January 12, 2005 (the "Family Trust"). The Family Trust purported by its terms to provide for the creation of successor and/or subsequent trusts. The Family Trust also described other documents which, if created in compliance with the terms of the Family Trust, could impact the assets and status of the Family Trust. Attempts were made by various parties to change the terms and control of the Family Trust through later instruments which have been or will be challenged. The estate also asserts claims against Anita Brunsting and Amy Brunsting, the current purported trustees of the successor trusts or trusts arising from the Family

2017-20360 / Court: 295

Trust or documents allegedly created pursuant to the terms of the Family Trust. Those claims will be the subject of separate proceedings and may result in additional estate assets.

4. The estate also asserts a claim against Anita Brunsting, Amy Brunsting, and Carole Brunsting in their individual capacities for amounts paid and assets believed to also include, among other things, stocks and bonds which were removed from the Family Trust and/or the estate. This was accomplished either through the use of a power of attorney for Decedent, through their position as trustees, through their position as joint signatories on accounts and safe deposit boxes, or because they otherwise had access to the assets. Those claims will also be the subject of a separate proceeding and may result in additional estate assets.

There are no known claims due or owing to the Estate other than those shown on the foregoing Inventory and Appraisement.

The foregoing Inventory, Appraisement and List of Claims should be approved and ordered entered of record.

CARL HENRY BRUNSTING,
Independent Executor of the Estate of
Nelva E. Brunsting

BAYLESS & STOKES

By: _____
Bobbie G. Bayless
State Bar No. 01940600
Dalia B. Stokes
State Bar No. 19267900
2931 Ferndale
Houston, Texas 77098
Telephone: (713) 522-2224
Telecopier: (713) 522-2218

Attorneys for Independent Executor

UNOFFICIAL COPY

03/27/2013 15:03:52 [illegible]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to the following interested parties as specified below on the 26th day of March, 2013, as follows:

Maureen Kuzik McCutchen
Mills Shirley, LLP
2228 Mechanic, Suite 400
P.O. Box 1943
Galveston, Texas 77553-1943
Houston, Texas 77056
sent via Telecopier

Candace Louise Curtis
1215 Ulfinian Way
Martinez, California 94553
sent via U.S. First Class Mail

Carole Ann Brunsting
5822 Jason St.
Houston, Texas 77074
sent via U.S. First Class Mail

BOBBIE G. BAYLESS

UNOFFICIAL COPY

20130227209 : Pages 1 : 03/26/2013 02:50:13 PM

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

I, CARL HENRY BRUNSTING, having been duly sworn, hereby state on oath that the foregoing Inventory, Appraisement and List of Claims is a true and complete statement of all the property and claims of the Estate that have come to my knowledge.

Carl Henry Brunsting
CARL HENRY BRUNSTING
Independent Executor of the Estate of
Nelva E. Brunsting, Deceased

SWORN TO and SUBSCRIBED BEFORE ME by the said CARL HENRY BRUNSTING, on this 26th day of March, 2013, to certify which witness my hand and seal of office.

SHAWN M. TEAGUE
MY COMMISSION EXPIRES
April 3, 2015

Shawn M. Teague
Notary Public in and for the
State of TEXAS
Printed Name: Shawn M. Teague
My Commission Expires: 4-3-2015

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17-20360.2403

2013-02-27 13:09:36 P.002

NO. 412.249

ESTATE OF	§	**IN PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

ORDER APPROVING INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this _____ day of _____, 2013.

_____
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: _____

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Dalia B. Stokes
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Attorneys for Independent Executor

UNOFFICIAL COPY

PROBATE COURT 4

NO. 412.248

ESTATE OF	§	**IN PROBATE COURT**
	§	
ELMER H. BRUNSTING,	§	**NUMBER FOUR (4) OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

ORDER APPROVING INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

3930 (b)
EFF 9-1-83

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

Christine Butts
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

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FILED
2013 APR -5 AM 10:01
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

APR 05 2013

UNOFFICIAL COPY

Filed on 10/17/2014 10:13:33 AM, Clerk

10/17/2014:1604:P0021

STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

PAID

Court No. **Probate Court No. Four (4)** Date: October 17, 2014

APPLICATION FOR LETTERS TESTAMENTARY
(Testamentary, or of Guardianship, or of Administration)

PROBATE
DOCKET NO. **412248** STYLE OF DOCKET: **ELMER H BRUNSTING , DECEASED**

FILED
2014 OCT 17 PM 3:20
HARRIS COUNTY CLERK
HARRIS COUNTY, TEXAS

Name of Personal Representative: CARL HENRY BRUNSTING

Title of Personal Representative: INDEPENDENT EXECUTOR

Date Oath Filed: 08/28/2012 Order Date: 08/28/2012

Date Approved Bond Filed: Amount Of Bond: $___

LETTERS: To Be Picked Up ○ A. A.:_____
To Be Mailed (at purchaser's risk) ○ Phone No.: 713-522-2224

4/G

To: BAYLESS & STOKES Called 10/17/14 @ 11:07 A. McKinley

(Street or P.O. Box Address)

City State Zip Code

Check 25677 $10.00

Phone

Signature of Person Requesting or Attorney of Record

RECEIPT FOR PAYMENT FOR LETTERS ABOVE DESCRIBED

Received of the person, whose signature appears hereinabove, the sum of **$10.00** for issuing the **5** Letters hereinabove described.

I authorize the County Clerk to mail this order to me by regular U.S. Mail and release the County Clerk of any and all responsibility of my failure to receive same.

STAN STANART,
County Clerk and Clerk of Probate Courts
Harris County, Texas

Received by: _____

Akida McKinley
Deputy County Clerk

Date: 10-17-14 Clerk's Initials: ACH

P.O. Box 1525 ● Houston, TX 77251-1525 ● (713) 755-6425
www.cclerk.hctx.net

Form No. I-02-060A (Rev. 04/18/2012)

UNOFFICIAL COPY

17-20360 2406

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

20000051801:5102603O

DATA ENTRY
PICK UP THIS DATE

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

****

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this ____ day of _____, 2015.

_____
JUDGE PRESIDING

UNOFFICIAL COPY

60004:5180:5102060

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03052015:0815:P0004

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FIGHTING THE PROBATE MAFIA: A DISSECTION OF THE PROBATE EXCEPTION TO FEDERAL COURT JURISDICTION

PETER NICOLAS*

I. INTRODUCTION

Imagine the following:[1] a Muslim woman with a history of chronic mental illness immigrates to the United States from Iran and settles in Colorado Springs, Colorado. At age 80, she visits a car dealership in Colorado Springs owned by a self-described Christian political activist. The womanôs vulnerability is obvious, and in the course of selling the woman a car, the owner of the car dealership discovers that she lives by herself and possesses significant assets. Shortly after selling her the car, the owner of the car dealership, in concert with some local probate attorneys, persuades the Muslim woman to execute an inter vivos trust giving the owner of the car dealership the power upon the womanôs death to use the entire principal of the trust at his sole discretion for ñChristian/Religious purposes.ò The car dealer and the attorneys also persuade the woman to execute documents giving them the power to make

* Assistant Professor, University of Washington School of Law. The author would like to thank Craig Allen, Thomas Andrews, Diane Atkinson-Sanford, Ian Birk, Magdalena Cuprys, Joan Fitzpatrick, Ann Hemmens, Kate OôNeill, Chris Waraksa, Mary Whisner, and Senior Editor, Lisa Ruesch, of the Southern California Law Review for valuable research, feedback, and assistance.

1. The scenario described is based on allegations contained in a complaint filed in the United States District Court for the District of Colorado. *See* Complaint and Demand for Jury Trial at 4ï 31, Nicolas v. Perkins, No. 00 Civ. 1414 (D.Colo. filed July 14, 2000). The author served without pay as the attorney of record in the matter. *See id.* at 31. For additional background information on the issues inspiring this hypothetical see Cara DeGette, *Perkins, Attorneys Accused of Wrongful Death and Fraud in Federal Court Case*, COLO. SPRINGS INDEP., July 20, 2000; Erin Emery, *Perkins Named in Suit over Estate, Family Claims $2.5 Million Diverted*, DENVER POST, July 20, 2000, at B5; Dick Foster, *Suit: 5 Defrauded Mentally Ill Woman, Car Dealer, Attorneys Deny Taking Control of Estate for 'Christian Religious Purposes,*ô DENVER ROCKY MOUNTAIN. NEWS, Jul. 24, 2000, at 4A.

medical decisions on her behalf. While the woman is still alive, the car dealer persuades her to withdraw large sums of money from the trust to ñinvestò in his ñbusiness ventures.ò

Shortly after the inter vivos trust and the power of attorney are executed, the womanôs health begins to deteriorate in a manner consistent with neglect. She is admitted to the emergency room no fewer than twenty times where she is repeatedly diagnosed as suffering from malnutrition, dehydration, failure to thrive, weight loss, and pneumonia. The emergency room doctors repeatedly note in her chart that the inability or unwillingness of those entrusted to make medical decisions on her behalf is hampering their ability to treat her effectively. While the womanôs health is deteriorating, not only do the car dealer and the attorneys fail to intervene under the power of attorney, but they also falsely communicate to members of the womanôs family residing outside of the area that the woman is in perfect health. At the same time they take steps to ensure that her family cannot locate her.

Ultimately, the woman dies. Shortly thereafter, one of the attorneys files a petition in the local probate court seeking appointment as the personal representative of the womanôs estate as well as a motion seeking a construction of the living trust document in a manner most favorable to the car dealer. These various filings make their way to one of the womanôs daughters, a citizen of New York. In the course of the ongoing probate proceedings, the womanôs daughter discovers what the car dealer and the attorneys did to her mother. While the probate proceedings are still pending, the daughter files suit against the car dealer and the attorneys in federal district court, in part because she perceives that the probate court judgeôs actions indicate open hostility toward her, as a resident of another state, and toward her attorneys. The federal action includes state common law claims of wrongful death and conversion, as well as a claim under the federal Racketeer Influenced and Corrupt Organizations Statute (ñRICOò).[2] She also seeks a declaratory judgment that the inter vivos trust is invalid.

Normally when a suit is brought in federal court, the court would determine its jurisdiction over the dispute by making a number of standard, independent inquiries. First, the court would determine whether there is a statutory grant of subject matter jurisdiction over the dispute.[3] In this

2. 18 U.S.C. ÄÄ1961ï 68 (1994).

3. *See, e.g.*, Powell v. McCormack, 395 U.S. 486, 512ï 13 (1969) (stating that ña federal district court lacks jurisdiction over the subject matter . . . if the cause is not one described by any jurisdictional statute.ò); Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850).

hypothetical there is complete diversity[4] giving the federal court subject matter jurisdiction over the state common law claims, provided the amount in controversy exceeds $75,000.[5] Additionally, since the RICO claim arises under a federal statute, there would seem to be statutory federal question jurisdiction.[6] Because a federal district court would have diversity jurisdiction over an action brought by the trustee to enforce the purported trust against the plaintiff in the federal action, the federal court likewise would have statutory subject matter jurisdiction over the declaratory judgment action.[7] Second, the court would determine whether these statutory grants of subject matter jurisdiction are among the permitted bases of subject matter jurisdiction provided for in Article III of the United States Constitution.[8] The statutory grants of jurisdiction involved hereð diversity and federal questionð are both firmly rooted in Article III.[9] Third, the court would determine whether the action presents a justiciable case or controversy; in other words, whether the action presents an actual dispute touching on the legal relations of parties having adverse legal interests (as contrasted with a dispute of a hypothetical or abstract character) and whether there is a substantial likelihood that a favorable

4. The statutory grant of diversity jurisdiction has been interpreted to require that no plaintiff be from the same state as *any* defendant, and that *any* overlap will defeat diversity jurisdiction. *See* Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267ï 68 (1806), *overruled on other grounds by* Louisville, C. & C.R. Co. v. Letson, 43 U.S. (2 How.) 497 (1844).

5. *See* 28 U.S.C. Ä1332(a)(1) (1994) (ñThe district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between . . . citizens of different states.ò).

6. *See* 28 U.S.C. Ä1331 (1994) (ñThe district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.ò). Moreover, the RICO statute itself provides an independent grant of subject matter jurisdiction to the federal courts. *See* 18 U.S.C. Ä1964(a) (1994) (ñThe district courts of the United States shall have jurisdiction to prevent and restrain violations of [the RICO statute] by issuing appropriate orders.ò); *id.* Ä1964(c) (ñAny person injured in his business or property by reason of a violation of [the RICO statute] may sue therefor in any appropriate United States district court.ò).

7. The Declaratory Judgment Act, 28 U.S.C. ÄÄ2201ï 02 (1994), provides a cause of action but does *not* expand federal court subject matter jurisdiction. *See* Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671ï 72 (1950). In order to determine whether a federal court has statutory subject matter jurisdiction over a declaratory judgment action, the court must determine whether an ordinary coercive suit brought by one of the parties would fall within the statutory subject matter jurisdiction of the federal courts. *See id.*

8. *See, e.g.*, Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480 (1983); Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303 (1809) (holding that ñthe statute cannot extend the jurisdiction beyond the limits of the constitutionò).

9. *See* U.S. CONST. art. III, Ä2, cl. 1. ñThe judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States . . . [and] to Controversies . . . between Citizens of different States.ò *Id.* *See also* Bankersô Trust Co. v. Tex. & Pac. Ry. Co., 241 U.S. 295 (1916) (upholding constitutionality of statutory grant of federal subject matter jurisdiction).

federal court decision will bring about some change or have some effect.[10] The facts of the above-described scenario would seem to satisfy the justiciability requirement. Fourth, because there is an ongoing in rem[11] proceeding in state probate court in the above-described scenario, the federal court would need to determine whether the doctrine of *custodia legis*, or prior exclusive jurisdiction, would prevent it from adjudicating the claims raised in federal court.[12] Fifth, if the court has subject matter jurisdiction and a justiciable controversy, and the doctrine of *custodia legis* does not bar adjudication of the claims raised in the federal court proceeding, the federal court would nonetheless determine whether it should abstain under one of the many recognized doctrines of prudential abstention.[13] Finally, the district court would refer to the law of the state in which it sits to determines the existence and scope of any common law tort or contract claims.[14]

Yet, lurking in the background of this hypothetical is the ñprobate exceptionò to federal court jurisdiction. It has the effect of excluding most probate and probate-related matters from federal court and has been aptly described as ñone of the most mysterious and esoteric branches of the law of federal jurisdiction.ò[15] The rationale for this judicially-created[16] exception is mired in confusion. It has variously been justified in Supreme Court and lower court decisions on grounds similar to those routinely used to evaluate federal jurisdiction as delineated above, including assertions that the statutory grant of subject matter jurisdiction conferred on the

10. *See, e.g.*, Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464 (1982); Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937).

11. A proceeding in rem is one in which a determination is made as to ownership of a thing or object that is binding on the whole world and not just on the parties to the proceeding. BLACKôS LAW DICTIONARY 793 (6th ed. 1991) [hereinafter BLACKôS LAW DICTIONARY].

12. Princess Lida of Thurn & Taxis v. Thompson, 305 U.S. 456, 465ï67 (1939). Under the doctrine of *custodia legis*, where in rem proceedings involving the same *res* are brought in multiple courts, the first court to assume jurisdiction over the *res* has exclusive jurisdiction over it. *Id.* at 467.

13. *E.g.*, Wilton v. Seven Falls Co., 515 U.S. 277 (1995); Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Younger v. Harris, 401 U.S. 37 (1971); County of Allegheny v. Frank Mashuda Co., 360 U.S. 185 (1959); Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25 (1959); Burford v. Sun Oil Co., 319 U.S. 315 (1943); Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491 (1942); Railroad Commôn of Tex. v. Pullman Co., 312 U.S. 496 (1941); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

14. Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938). This would include the stateôs choice-of-law rules, which might, in turn, refer the court to the laws of yet another state. Klaxon v. Stentor Electric Mfg., 313 U.S. 487, 496 (1941).

15. Dragan v. Miller, 679 F.2d 712, 713 (7th Cir. 1982).

16. *E.g.*, Georges v. Glick, 856 F.2d 971, 973 (7th Cir. 1988).

federal courts by Congress does not extend to probate matters;[17] that because the probate of a will is a proceeding in rem, a federal court cannot exercise jurisdiction over an estate if the state probate court has already taken jurisdiction of the estate (i.e., the doctrine of *custodia legis*);[18] that probate matters are not justiciable ñcases or controversiesò within the meaning of Article III;[19] and the prudential desire to avoid interfering with ongoing state court proceedings.[20] In addition, courts have explained the basis of the probate exception by noting that probate matters are by state law committed to the exclusive jurisdiction of the state probate courts;[21] that because the authority to make wills is derived from the states, and the requirement of probate is but a regulation to make a will effective, matters of ñstrict probateò are not within the jurisdiction of the federal courts;[22] the need for legal certainty as to the disposition of the deceasedôs estate;[23] the interest in judicial economy;[24] and the relative expertise of state and federal courts with respect to probate matters.[25]

This confusion over the rationale for the exception has also resulted in confusion as to its scope. First, is it a limitation on federal court subject matter jurisdiction, a discretionary doctrine of abstention, or both? Second, if it is a limitation on federal court subject matter jurisdiction, is this limitation based on Congressôstatutory grants of subject matter jurisdiction to the federal courts or is it an Article III limitation? Third, does the probate exception apply only to the federal courtsô grant of diversity jurisdiction, or does it also extend to other statutory grants of jurisdiction, such as federal question jurisdiction? Fourth, which types of actions fall within the exceptionð is it limited to the actual probate of a will, or does it

17. *E.g.*, Markham v. Allen, 326 U.S. 490, 494 (1946); *In re* Broderickôs Will, 88 U.S. (21 Wall.) 503, 509 (1874).

18. *E.g.*, Sutton v. English, 246 U.S. 199, 205 (1918); Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 44 (1909) (citing Farrell v. OôBrien, 199 U.S. 89 (1905)); Byers v. McAuley, 149 U.S. 608, 617 (1893). *See In re Broderick's Will*, 88 U.S. (21 Wall.) at 509.

19. *E.g.*, Galleher v. Grant, 160 F. Supp. 88, 94 (N.D. Ill. 1958).

20. *E.g.*, *Georges*, 856 F.2d at 974; Rice v. Rice Foundation, 610 F.2d 471, 475 (7th Cir. 1979) (citing Markham v. Allen, 326 U.S. 490, 494 (1946)); Hudson v. Abercrombie, 682 F. Supp. 1218, 1219 (N.D. Ga. 1987).

21. *E.g.*, Reinhardt v. Kelly, 164 F.3d 1296, 1300 (10th Cir. 1999); Bedo v. McGuire, 767 F.2d 305, 306 (6th Cir. 1985); Lamberg v. Callahan, 455 F.2d 1213, 1216 (2d Cir. 1972); Foster v. Carlin, 200 F.2d 943, 947 (4th Cir. 1953).

22. *Sutton*, 246 U.S. at 205; *Farrell*, 199 U.S. at 110.

23. Dragan v. Miller, 679 F.2d 712, 714 (7th Cir. 1982); *Georges*, 856 F.2d at 973ï 74; Cenker v. Cenker, 660 F. Supp. 793, 795 (E.D. Mich. 1987); Jackson v. U.S. Natôl Bank, 153 F. Supp. 104, 110ï 11 (D. Or. 1957).

24. *Dragan*, 679 F.2d at 714; *Georges*, 856 F.2d at 974; *Cenker*, 660 F. Supp. at 795.

25. *Dragan*, 679 F.2d at 714ï 15; *Georges*, 856 F.2d at 974; *Cenker*, 660 F. Supp. at 795.

extend to matters ancillary to probate? If the latter, what does ñancillaryò mean? Fifth, is the scope of the exception fixed as a matter of federal law, or does it vary based on the internal division of probate jurisdiction within the court systems of each state? Finally, is the probate exception limited only to suits involving wills proper, or does it extend to suits involving will substitutes, such as inter vivos trusts? Although a close analysis of the Supreme Courtôs probate exception precedents reveals that the applicability of the doctrine turns on the overlapping results of the six independent inquiries delineated above,[26] the lower federal courts have instead created and applied competing, one-step formulae for determining whether a given suit falls within or without the probate exception.

Despite the complexity and confusion surrounding the probate exception to federal court jurisdictionð or perhaps because of itð it has been given scant attention in the literature.[27] This Article seeks to fill the gap. Part II of this Article sets forth the current application of the probate exception in the lower federal courts. Part III of this Article examines the statutory and constitutional constraints on the federal courtsô exercise of subject matter jurisdiction over probate and probate related matters. Part III concludes that the probate exception is a mere gloss on the statutory grants of subject matter jurisdiction to the federal courts and that the extent of this limitation is not nearly as great as judicial decisions and commentators have suggested. Part IV examines the constraints placed on the federal courtsô exercise of jurisdiction over probate and probate-related matters by the doctrine of *custodia legis*, and concludes that the doctrine prevents federal courts from exercising jurisdiction over certain probate-related matters not otherwise excluded from their jurisdiction by the conventional understanding of the statutory grants of subject matter jurisdiction to the federal courts. Part V examines the role of prudential abstention with respect to probate-related matters falling outside the formal scope of the probate exception, and concludes that although courts can properly invoke abstention with regard to certain probate-related claims not otherwise excluded by the limits of the statutory grants of subject matter jurisdiction or by the doctrine of *custodia legis*, some lower courts are

26. *See supra* text accompanying notes 3ï 14.

27. *See, e.g.*, ERWIN CHEMERINSKY, FEDERAL JURISDICTION Ä 5.3, at 300ï 01 (3d ed. 1999) (noting domestic relations and probate exceptions to federal jurisdiction but focusing primarily on issues related to the domestic relations exception). *See also* RICHARD H. FALLON, DANIEL J. MELTZER, & DAVID L. SHAPIRO, HART AND WECHSLERôS THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1333ï 36 (4th ed. 1996); CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, 13B FEDERAL PRACTICE AND PROCEDURE Ä 3610 (2d ed. 1984); Gregory C. Luke & Daniel J. Hoffheimer, *Federal Probate Jurisdiction: Examining the Exception to the Rule*, 39 FED. B. NEWS & J. 579 (1992).

improperly abstaining on grounds not justified under any recognized doctrine of abstention. Part VI demonstrates that what has been described by the lower federal courts as the ñprobate exceptionò to federal court subject matter jurisdiction cannot be reduced to the simplistic formulae adopted by various federal appeals courts. Instead, the probate exception is really an amalgam of five distinct rules that must be applied in tandem to determine whether a given suit falls within the probate exception: (1) the *Erie* doctrine; (2) the statutory and constitutional limitations on federal court subject matter jurisdiction; (3) the doctrine of *custodia legis*; (4) the requirement of a justiciable case or controversy; and (5) prudential abstention. This Article concludes that courts should construe the probate exception narrowly to prevent prejudice against out of state claimants and to ensure that claimantsô federal statutory rights may be enforced. In addition, this Article recommends that Congress consider enacting a statutory override of the probate exception.

II. MODERN APPLICATION OF THE PROBATE EXCEPTION

A. *MARKHAM V. ALLEN*: THE SUPREME COURTôS MOST RECENT RULING ON THE PROBATE EXCEPTION

The Supreme Court last addressed the probate exception in *Markham v. Allen*.[28] There, the will of a California resident had been admitted into probate and had named as legatees[29] certain persons resident in Germany.[30] Six U.S. citizensô heirs-at-law[31] of the decedentô filed a petition in state court asserting that under state law the German legatees were ineligible as beneficiaries[32] and that the U.S. heirs were thus entitled to inherit the decedentôs estate.[33] The Alien Property Custodian, acting pursuant to the Trading with the Enemy Act, purported to vest himself as Custodian with all right, title and interest of the German legatees, and brought suit in federal district court against the executor of the estate and the six U.S. heirs-at-law for a determination that the U.S. claimants had no interest in

28. 326 U.S 490 (1946).

29. A legatee is one who is named in a will to take personal property. BLACKôS LAW DICTIONARY, *supra* note 11, at 897ï 98.

30. *Markham*, 326 U.S. at 492.

31. An ñheir-at-lawò is a person who inherits a deceased personôs estate under state statutes of descent and distribution in the absence of a valid testamentary disposition. BLACKôS LAW DICTIONARY, *supra* note 11, at 723.

32. The state law at issue purported to limit inheritance by non-resident aliens to nationals of countries that granted reciprocal rights of inheritance to U.S. citizens. *Markham*, 326 U.S. at 492 n.1.

33. *Id.* at 492.

the estate and that, moreover, the entire estate belonged to the Custodian.[34] The district court granted judgment for the Alien Property Custodian,[35] but the Court of Appeals reversed, holding that the suit filed in federal court was barred by the probate exception.[36]

After stating the general rule that the federal courts lack jurisdiction to probate a will or to administer an estate, the Supreme Court stated yet another, general rule:

> [F]ederal courts of equity have jurisdiction to entertain suits ó*in favor of creditors, legatees and heirs*ô and other claimants against a decedentôs estate ó*to establish their claims*ô so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.ò[37]

The Court clarified somewhat the meaning of the word ñinterfere,ò holding the mere fact that the state probate courtð when ultimately distributing the estateð would be bound to recognize the rights adjudicated in the federal court would not constitute an interference with the state probate proceedings.[38] Thus, the effect of the declaratory judgment sought by the Custodian in the case before the Court would not be an exercise of probate jurisdiction or an interference with property in the possession or custody of a state court. Instead, it would merely decree the Custodianôs right in the property to be distributed after its administration by the state probate court.[39]

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34. *Id.*

35. *See* Crowley v. Allen, 52 F.Supp. 850 (N.D. Cal. 1943).

36. *See* Allen v. Markham, 147 F.2d 136 (9th Cir. 1945), *rev'd*, 326 U.S. 490 (1946).

37. *Markham*, 326 U.S. at 494 (citing Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 43 (1909)). *See also* Sutton v. English, 246 U.S. 199, 205 (1918) (stating that ñquestions relating to the interests of heirs, devisees, or legatees, or trusts affecting such interests, which may be determined without interfering with probate or assuming general administration, are within the jurisdiction of the federal courts where diversity of citizenship exists and the requisite amount is in controversyò); Hess v. Reynolds, 113 U.S. 73, 76ï77 (1885) (holding that suits by an executor to enforce payment of debts owed to the decedent as well as suits against the executor on obligations contracted by the decedent fall within the federal courtsô grant of diversity jurisdiction); Payne v. Hook, 74 U.S. (7 Wall.) 425, 429ï30 (1868) (noting a suit by a distributee against the administrator of the estate was within the subject matter jurisdiction of the federal courts).

38. *Markham*, 326 U.S. at 494. The debt thus established, however, ñmust take its place and share of the estate as administered by the probate court; and it cannot be enforced by process directly against the property of the decedent.ò Byers v. McAuley, 149 U.S. 608, 620 (1893). *Accord Waterman*, 215 U.S. at 44.

39. *Markham*, 326 U.S. at 495.

B. DEVELOPMENT OF THE PROBATE EXCEPTION IN THE LOWER COURTS

1. Lower Court Tests for Determining What Falls Within the Exception

To be sure, *Markham* provided some guidance to the lower federal courts as to the scope of the probate exception. In the wake of *Markham*, the lower courts are in agreement that the federal courts lack subject matter jurisdiction over so-called ñpureò probate matters,[40] including the actual probate of a will[41] (the ñprocedure by which a will is proved to be valid or invalidò),[42] the administration of the estate (the process of collecting the decedentôs assets, liquidating liabilities, paying necessary taxes, and distributing property to heirs),[43] as well as obtaining an accounting of the same[44] and appointing or removing the deceasedôs personal representative or the attorney representing the estate.[45] Moreover, the lower courts generally agree that creditors, legatees, heirs, and other claimants may establish their claims against the estate in federal court, with the caveat that the claims so establishedð whether by way of a declaratory judgment in the case of a legatee or heir establishing his or her right to a share of the estate, or in an actual suit on the merits in the case of a creditorð must then take their place and share in the estate as provided for in the probate court proceedings.[46] Yet, beyond these guideposts derived from the *Markham*

40. Georges v. Glick, 856 F.2d 971, 973 (7th Cir. 1988). *See* Hudson v. Abercrombie, 682 F. Supp. 1218, 1219 (N.D. Ga. 1987) (citing *Markham*, 326 U.S. at 494; Ellis v. Davis, 109 U.S. 485 (1883)).

41. *E.g.*, *Georges*, 856 F.2d at 973; Celentano v. Furer, 602 F. Supp. 777, 780ï81 (S.D.N.Y. 1985).

42. BLACKôS LAW DICTIONARY, supra note 11, at 1202.

> The matters and things to be determined upon the probate of a will, are the mental capacity of the testator, the factum of the making of the will, and its due execution according to law. The question of a construction of the will, or any clause thereof is never properly before the court in a proceeding to establish the instrument.

3 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA Ä1890, at 490 (14th ed. 1918) [hereinafter 3 STORY, COMMENTARIES].

43. *E.g.*, Oliver v. Oliver, No. 98-1460, 1999 U.S. App. LEXIS 9347, at *3ï *5 (4th Cir. May 17, 1999) (unpublished decision); Turton v. Turton, 644 F.2d 344, 347 (5th Cir. 1981); Galion Iron Works & Mfg. Co. v. Russell, 167 F. Supp, 304, 308 (W.D. Ark. 1958) (observing that ñ[i]t is a well settled rule that federal courts may not engage in the general administration of an estate or disturb the possession of property within the custody of a state courtò).

44. *E.g.*, Bortz v. DeGolyer, 904 F. Supp. 680, 684 (S.D. Ohio 1995); Sisson v. Campbell Univ., Inc., 688 F. Supp. 1064, 1068 (E.D.N.C. 1988).

45. *E.g.*, Jones v. Harper, 55 F. Supp.2d 530, 533 (S.D.W. Va. 1999) (holding that ñthe probate exception prevents [the district court] from . . . removing the defendant and appointing the plaintiff as personal representativeò because this would interfere with the administration of the estate).

46. *E.g.*, Michigan Tech. Fund v. Century Natð Bank, 680 F.2d 736, 740 (11th Cir. 1982) (holding that it is permissible for a federal court to adjudicate a breach of agreement to make a mutual will because it is akin to a creditor suing for breach of contract); *Turton*, 644 F.2d at 344, 347

opinion as to the scope of the probate exception, ñthe contours of the exception are vague and indistinct,ò[47] creating substantial uncertainty as to the sorts of actions that would ñinterfereò with state probate proceedings. In an attempt to fill the gap left by the Supreme Court, the lower courts have developed several competing formulae for determining whether a cause of action falls within the probate exception, ñendeavor[ing] to distinguish between direct interference with or control of the *res* and adjudication of the rights of individuals who have an interest in the res . . . [a] line of distinction [that] is not always clear.ò[48]

a. The ñNature of Claimò Test

One lower court test for determining whether a claim is sufficiently related to probate so as to fall within the probate exception examines the nature of the plaintiffôs claim, with the plaintiffôs position vis-¨-vis the will being the dispositive factor. Under the ñnature of claimò test, if the plaintiffôs claim rests upon an assertion that the will is invalid (such as where the plaintiff seeks to void the will due to undue influence or lack of testamentary capacity), then the case falls within the probate exception. This is because the federal court must rule on the validity of the will in order to resolve the claimð a ruling that would directly overlap and thus ñinterfereò with the state courtôs probate process. On the other hand, if the plaintiff acknowledges the validity of the will and merely asserts a right to share in the distribution of the estate (either as a matter of interpretation of the will or in reliance on some state law forced-share provision), the federal court is free to adjudicate the claim.[49]

(explaining that a creditor can obtain a federal judgment that he has a valid claim for a given amount against the estate, and that the judgment can be asserted as res judicata in the state probate court proceedings); Holt v. King, 250 F.2d 671, 675 (10th Cir. 1957); Holt v. Werbe, 198 F.2d 910, 915 (8th Cir. 1952); McClendon v. Straub, 193 F.2d 596, 598 (5th Cir. 1952) (asserting that ñ[j]urisdiction of the [federal] court to ascertain and declare the interest of the plaintiff in the estate . . . is clearly established by a long line of casesò); Milam v. Sol Newman Co., 205 F. Supp. 649, 650, 653ï 54 (N.D. Ala. 1962) (holding that the federal court can adjudicate tort action against estate for injuries plaintiff sustained in auto accident); Odom v. Travelers Ins. Co., 174 F. Supp. 426, 434 (W.D. Ark. 1959) (noting that federal court can hear controverted question of debt or no debt as against the estate); *Galion Iron Works & Mfg. Co.*, 167 F. Supp. at 309ï 10 (noting that federal courts can entertain suits to establish claims against the estate, but those claims must stand in line). *But cf.* White v. White, 126 F. Supp. 924, 925ï 26 (S.D. Idaho 1954) (holding the statement in *Markham* that the federal courts have jurisdiction to entertain suits in favor of creditors and legatees does not apply in diversity actions, and that the court must look to whether under state law, the state courts of general jurisdiction would have jurisdiction over such suits).

47. *Georges*, 856 F.2d at 973.

48. Starr v. Rupp, 421 F.2d 999, 1005 (6th Cir. 1970). *Accord* Bassler v. Arrowood, 500 F.2d 138, 142 (8th Cir. 1974); Martz v. Braun, 266 F. Supp. 134, 138 (E.D. Pa. 1967).

49. *E.g.*, Turja v. Turja, 118 F.3d 1006, 1009 (4th Cir. 1997) (noting that no federal court has found that it has jurisdiction to invalidate a will due to lack of testamentary capacity or undue

b. The ñRouteò Test

A far more common lower court test examines the route that the suit would take had it been brought in state court. Under the ñrouteò test, if the dispute under state law could be adjudicated only in a probate court, then there is no federal court jurisdiction. If, however, under state law the state courts of general jurisdiction would have jurisdiction over the dispute, then federal court jurisdiction exists (assuming, of course, that the complete diversity and amount in controversy requirements are satisfied).[50] Under

influence); *Michigan Tech. Fund*, 680 F.2d at 739ï 40 (holding that a challenge to a willôs validity is not within the federal courtôs subject matter jurisdiction, but that an action seeking an interpretation of a will is within its jurisdiction); Blakeney v. Blakeney, 664 F.2d 433, 434 (5th Cir. 1981) (finding no jurisdiction where there is an attack on the deceasedôs testamentary capacity as that goes to the willôs validity); Rice v. Rice Found., 610 F.2d 471, 476 (7th Cir. 1979) (describing but not adopting rule). *See also* Gant v. Grand Lodge, 12 F.3d 998, 1003ï 04 (10th Cir. 1993) (noting federal courts have jurisdiction to construe wills). While this approach is often attributed to a line of Fifth Circuit cases, *e.g.*, *Rice*, 610 F.2d at 476 (citing Akin v. Louisiana Natôl Bank, 322 F.2d 749, 753ï 54 (5th Cir. 1963)); Mitchell v. Nixon, 200 F.2d 50, 51ï 52 (5th Cir. 1952); *Michigan Tech Fund*, 680 F.2d at 739 (citing Kausch v. First Wichita Natôl Bank, 470 F.2d 1068, 1070 (5th Cir. 1972)), a closer examination of these cases reveals that they were applying the ñrouteò test, discussed *infra* Part II.B.1.b. *See Kausch*, 470 F.2d at 1069ï 70 (examining Texas law); *Akin*, 322 F.2d at 753ï 55 (examining Louisiana law, and distinguishing between suits that attack the validity of a will and suits in which parties differ only as to a willôs effect or construction, and exercising jurisdiction over suit to declare plaintiffôs interest as a forced heir); *Mitchell*, 200 F.2d at 51ï 52 (examining Alabama law). *See also* Gaines v. Chew, 43 U.S. (2 How.) 619, 647ï 50 (1844) (holding that although the court likely lacked jurisdiction in equity to set aside a will due to fraud, the heir could bring suit under the stateôs forced heirship laws, since it does not require the court either to prove or to set aside the will); Robertson v. Robertson, 803 F.2d 136, 138ï 39 (5th Cir. 1986) (applying Arkansas law, and concluding there is federal court jurisdiction where validity of will is not contested, and where all that is sought is a declaration decedent died a resident of Louisiana, and that the plaintiff was thus entitled to forced heirship).

50. *See* Green v. Doukas, No. 99-7733, 2000 U.S. App. LEXIS 2239, at *8ï 9 (2d Cir. Feb. 15, 2000) (unpublished decision) (holding that the probate-exception standard is whether under state law, the claims will be cognizable only in state probate court); Oliver v. Oliver, No. 98-1460, 1999 U.S. App. LEXIS 9347, at *4 (4th Cir. May 17, 1999) (unpublished decision) (noting that federal courts have no subject matter jurisdiction over matters exclusively within the jurisdiction of state probate courts); Reinhardt v. Kelly, 164 F.3d 1296, 1299ï 1300 (10th Cir. 1999); McKibben v. Chubb, 840 F.2d 1525, 1529 (10th Cir. 1988) (stating that if a state vests its courts of equity with jurisdiction to hear contested will suits, the federal courts in the state may enforce that right); Bedo v. McGuire, 767 F.2d 305, 306 (6th Cir. 1985) (holding that the federal court had no jurisdiction over breach of fiduciary duty action by beneficiaries of estate against executor because only the probate courts of the state have jurisdiction over such disputes); Moore v. Lindsey, 662 F.2d 354, 361 (5th Cir. 1981); *Rice*, 610 F.2d at 476 (describing but not adopting rule); *Bassler*, 500 F.2d at 142 (suggesting that ñ[w]here a claim is enforceable in a state court of general jurisdiction, the argument becomes more persuasive that federal diversity jurisdiction should be assumedò) (citing Lamberg v. Callahan, 455 F.2d 1213, 1216 (1972)); Harris v. Pollack, 480 F.2d 42, 45ï 46 (10th Cir. 1973); *Lamberg*, 455 F.2d at 1216 (2d Cir. 1972) (setting forth the standard); Looney v. Capital Natôl Bank, 235 F.2d 436 (5th Cir. 1956) (holding that because a declaratory judgment action could be brought in state court to have a testamentary trust declared invalid based on the rule against perpetuities, such an action also could be maintained in a federal court); Foster v. Carlin, 200 F.2d 943, 947 (4th Cir. 1953) (citing district court cases holding that whether an action could be maintained in a state court of general jurisdiction determines whether

this standard, the scope of the probate exception varies across the federal courts according to the internal division of jurisdiction within each state between its probate courts and its courts of general jurisdiction.

c. The ñPracticalò Test

Judge Posner developed yet a third test for determining whether a suit, while not a ñpure matter of probate,ò was nonetheless barred by the probate exception because it was ñancillaryò to probate.[51] Under Judge Posnerôs ñpracticalò test, the question of whether a suit is ñancillaryò to probateð and thus within the probate exception to federal court jurisdictionð turns on whether ñallowing it to be maintained in federal court would impair the policies served by the probate exception.ò[52] Judge Posner identified a number of practical purposes that the probate exception was designed to serve: the promotion of legal certainty (by having all issues regarding the transfer of property at death litigated in a single forum); judicial economy; and the relative expertise of state probate court judges in adjudicating probate-related questions, such as testamentary capacity.[53] Judge Posner

federal court jurisdiction exists); Sullivan v. Title Guarantee & Trust Co., 167 F.2d 393, 395 (2d Cir. 1948) (asserting that a federal court can exercise jurisdiction only if state court of general jurisdiction would exercise jurisdiction); Cmty. Ins. Co. v. Rowe, 85 F. Supp.2d 800, 805 (S.D. Ohio 1999); Johnson v. Porter, 931 F. Supp. 761, 762 (D. Colo. 1996) (stating that the issue is whether under state law, suit would be cognizable only in state probate court); Celentano v. Furer, 602 F. Supp. 777, 779 (S.D.N.Y. 1985) (stating that the standard is whether under state law, the dispute would be cognizable only in the probate court); Maxwell v. Southwest Natôl Bank, 593 F. Supp. 250, 252 (D. Kan. 1984) (asserting that ñ[t]he court must determine whether under Kansas law the claims are such as would traditionally have been cognizable only in a probate court or whether the claims are such as could be asserted in a court of general jurisdictionò); Dunaway v. Clark, 536 F. Supp. 664, 670 (S.D. Ga. 1982) (stating that an ñexception to the [probate exception] is present where a state by statute or custom gives parties a right to bring an action in [state] courts of general jurisdictionò); Lightfoot v. Hartman, 292 F. Supp. 356, 357ï 58 (W.D. Mo. 1968) (ruling that the federal court has no jurisdiction because under state law the claim is in exclusive jurisdiction of state probate court); Eyber v. Dominion Natôl Bank of Bristol Office, 249 F. Supp. 531, 532ï 33 (W.D. Va. 1966) (observing that the state legislature ñhas not chosen to make probate a part of the general equity jurisdiction of the courts of Virginia, and it follows that a federal court sitting in the state will be limited in the same manner as the State Equity Courtò); *Galion Iron Works & Mfg. Co.*, 167 F. Supp. 304, 311ï 12 (W.D. Ark. 1958) (remarking that if state law does not afford a remedy in a state court of general jurisdiction, federal courts cannot assume jurisdiction); Quinlan v. Empire Trust Co., 139 F. Supp. 168, 169ï 70 (S.D.N.Y. 1956) (reasoning that because state courts of general jurisdiction can declare trusts and wills invalid due to undue influence, fraud, and lack of mental capacity, the federal courts likewise have jurisdiction to do so); Illinois State Trust Co. v. Conanty, 104 F. Supp. 729, 731ï 32 (D.R.I. 1952).

51. Dragan v. Miller, 679 F.2d 712, 715 (7th Cir. 1982). The Seventh Circuit had previously noted the existence of the ñnatureò and ñrouteò tests but had declined to adopt either test. *See Rice*, 610 F.2d at 476.

52. *Dragan*, 679 F.2d at 715ï 16.

53. *Id.* at 714ï 15. Taken to its logical extreme the interest in judicial economy and the relative expertise of state court judges contained in Judge Posnerôs practical test would provide an argument for eradicating diversity jurisdiction altogether. Federal court judges sitting in diversity must often struggle

attributed the least weight to the policy of promoting legal certainty, reasoning that it is neutralized by the policy of avoiding parochial bias in favor of in-state litigants that underlies the federal courtsô grant of diversity jurisdiction.[54] Under his test, the force of the other two policies varies with state law: for example, relative expertise carries greater force in states that create a specialized cadre of probate judges than in states in which probate matters are heard in courts of general jurisdiction. Similarly, judicial economy carries more weight in states that restrict the raising of a challenge to testamentary capacity to the original probate proceeding than in states allowing the issue to be raised in separate judicial proceedings.[55]

In *Dragan*, Judge Posner applied his ñpractical factorsò test and held there was no jurisdiction over a suit brought by the heirs-at-law of the decedent against the beneficiaries of the decedentôs will for tortious interference with an expectancy of inheritance.[56] Key in Judge Posnerôs view was the interest in judicial economy. Under Illinois law, a challenge to the validity of a willð whether characterized as a ñwill contestò or as a tort claim of interference with an expectancyð could be brought only in the ongoing proceeding to probate the will and within a specified time period.[57] For a federal court to exercise jurisdiction over the tort action would

to determine the meaning of state law, and it would certainly be more efficient to eliminate diversity jurisdiction entirely and have state law decided exclusively in state courts by judges more familiar with state law. Yet, the diversity statute as drafted has struck a balance between the interest in judicial economy and fairness to litigants, and it is thus difficult to see why probate-related cases should be treated any differently from other cases involving issues of state law. Subsequent cases often make mention of the fact that the probate proceeding has closed, *see e.g.*, Loyd v. Loyd, 731 F.2d 393, 397 (7th Cir. 1984); McClain v. Anthony, No. 88 C 8503, 1989 WL 44307, at *2 (N.D. Ill. Apr. 28, 1989), but this does not appear to be a formal requirement, *see e.g.*, Hamilton v. Nielsen, 678 F.2d 709, 710 (7th Cir. 1982). The Supreme Court, in discussing the analogous exception to federal court jurisdiction for domestic relations matters in *Ankenbrandt v. Richards*, indicated the exception was justified by the interests in judicial economy and the relative expertise of state family court judges. 504 U.S. 689, 703ï 04 (1992).

54. *Dragan*, 679 F.2d at 716.

55. *Id.* at 715.

56. *Id.* at 716ï 17.

57. *Id.* Under Judge Posnerôs test, however, the probate exception does not apply where the state relegates probate matters to its courts of general jurisdiction rather than to specialized probate courts, or provides that the specific claim is not, as a matter of state law, part of the will contest and thus need not be brought exclusively in the ongoing proceeding to probate the will. *See Loyd*, 731 F.2d at 393, 396ï 97 (proper to exercise jurisdiction over suit brought against the estateôs administrator by the decedentôs widow for fraud in connection with the sale of certain real property owned by the estate, where probate matters in the state were relegated to the courts of general jurisdiction and the specific statutory provision providing for contesting alleged frauds was not limited to probate court); Georges v. Glick, 856 F.2d 971, 972ï 75 (7th Cir. 1988) (finding that it is proper to exercise jurisdiction over claims of legal malpractice and breach of contract brought by the decedentôs heirs against the decedentôs attorney as such claims are not, as a matter of state law, part of the will contest and need not be brought exclusively in the ongoing proceeding to probate the will).

undermine the stateôs demonstrated interest in judicial economy.[58] Relative expertise also weighed in favor of using the probate exception: undue influence over a testator is an issue with which Illinois state judges have greater expertise.[59] But unlike courts that follow the ñnature of the claimò test, Judge Posner did not hold that such challenges are categorically outside the federal courtsô grant of diversity jurisdiction. Instead, he held that if Illinois state law allows an action challenging the validity of a will to be brought as a separate tort action before a different judge than the one who probated the will, then the policy of judicial economy would lose its force.[60]

2. Application of the Probate Exception

a. Inter Vivos and Testamentary Trusts

While a great deal of property is transferred at death by way of devises in a will, an increasing number of people transfer their property using ñwill substitutes,ò including trusts.[61] In a trust, property is held by a trustee at the request of the owner of the property (the settlor) for the benefit of a third party, the beneficiary.[62] In a trust relationship, the trustee holds legal title to the property, but has an equitable duty to hold the property for the benefit of the beneficiary.[63] There are, broadly speaking, two different types of trusts: inter vivos trusts and testamentary trusts. Inter vivos trusts are created and take effect during the settlorôs lifetime.[64] Thus, the

58. *Dragan*, 679 F.2d at 716.

59. *Id.*

60. *Id.* at 717. In *Hamilton v. Nielsen*, 678 F.2d 709 (7th Cir. 1982), published just two weeks prior to *Dragan*, Judge Posner found that the federal courts had subject matter jurisdiction over an action brought by a beneficiary of a testamentary trust against the executors for negligent breach of fiduciary duty. *Id.* at 709ï 10. Judge Posner reasoned that because ñsuch cases when brought in state courts in Illinois are brought in its courts of general jurisdiction rather than in courts with a specialized probate jurisdiction . . . retention of federal diversity jurisdiction over such cases will not interfere with a state policy of channeling all probate-related matters to specialized courts.ò *Id.* at 710. The court went on to hold, however, that this would not allow federal courts to probate wills, even though that is done in state courts of general jurisdiction, reasoning that ñ[p]robate remains a peculiarly local function which federal courts are ill equipped to perform.ò *Id.* The court did note that the suit did not seek to enjoin the probate proceedings, involve the validity or construction of the will, or try to change the distribution of the estate assets. *Id.*

61. *See* John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 HARV. L. REV. 1108 (1984); Nathaniel W. Schwickerath, *Public Policy and the Probate Pariah: Confusion in the Law of Will Substitutes*, 48 DRAKE L. REV. 769, 770 (2000).

62. BLACKôS LAW DICTIONARY, *supra* note 11, at 1508.

63. RESTATEMENT (SECOND) OF TRUSTS Ä 2 cmt. h (1959); BLACKôS LAW DICTIONARY, *supra* note 11, at 1509.

64. BLACKôS LAW DICTIONARY, *supra* note 11, at 1511. A special kind of inter vivos trust is the ñpour-over trustò: it is created during the settlorôs lifetime, but the settlorôs assets are not immediately

property is transferred to the trustee while the settlor is still alive. In contrast, a testamentary trust is created by a will and does not take effect until the settlor dies.[65]

Legal disputes frequently arise in connection with trusts. For example, the beneficiaries might bring suit against the trustee for breach of fiduciary duty or conversion, demanding an accounting, removal of the trustee, or both.[66] Alternatively, heirs who are not named as beneficiaries in the trust instrument might bring a suit challenging the validity of the trust (usually alleging lack of capacity or undue influence),[67] alleging that the trust instrument failed to comply with the requirements of state law;[68] or alleging that the settlor had revoked the trust during her lifetime.[69]

The probate exception is frequently raised as a defense when such actions are filed in federal court. Most courts have rejected this defense, holding the probate exception does not apply to trusts.[70] Often no explanation is given for this distinction, but a few courts have relied on the fact that trusts, unlike wills, did not fall within the exclusive jurisdiction of the ecclesiastical courts in eighteenth-century England, but instead were within the jurisdiction of the High Court of Chancery, and thus fall within the statutory grant of equity jurisdiction to U.S. federal courts.[71] A few

transferred to the trustee. Rather, upon the settlorôs death, the trust receives property by way of a devise from the settlorôs will, usually by way of the residual estate. *Id.* at 1512.

65. BLACKôS LAW DICTIONARY, *supra* note 11 at 1513.

66. *See, e.g.*, Georges v. Glick, 856 F.2d 971, 972ï 73 (7th Cir. 1988); Schonland v. Schonland, No. Civ. 397CV558(AHN), 1997 WL 695517, at *1 (D. Conn. Oct. 23, 1997); Weingarten v. Warren, 753 F. Supp. 491, 492ï 93 (S.D.N.Y. 1990); Barnes v. Brandrup, 506 F. Supp. 396, 397ï 98 (S.D.N.Y. 1981); Rousseau v. U.S. Trust Co. of N.Y., 422 F. Supp. 447, 450ï 51 (S.D.N.Y. 1976).

67. *E.g.*, Turja v. Turja, 118 F.3d 1006, 1007ï 08 (4th Cir. 1997); Johnston v. Goss, No. 95-6295, D.C. CIV-94-1465-A, 1997 WL 22530, at *1 (10th Cir. Jan. 22, 1997) (unpublished decision); Davis v. Hunter, 323 F. Supp. 976, 977ï 78 (D. Conn. 1970); Jackson v. U.S. Natôl Bank, 153 F. Supp. 104, 108 (D. Or. 1957).

68. *E.g.*, Lancaster v. Merchants Natôl Bank, 752 F. Supp. 886, 887ï 89 (W.D. Ark. 1990), *rev'd*, 961 F.2d 713 (8th Cir. 1992).

69. *E.g.*, Sisson v. Campbell Univ., Inc., 688 F. Supp. 1064, 1065 (E.D.N.C. 1988).

70. *See Schonland*, 1997 WL 695517, at *2 (stating that ñthe probate exception does not apply to trustsò); *Weingarten*, 753 F. Supp. at 494ï 95 (stating that ñ[t]he probate exception to diversity jurisdiction does not apply to trustsò); *Lancaster*, 752 F. Supp. at 888 (holding the probate exception does not apply to challenges to the validity of a trust); *Barnes*, 506 F. Supp. at 399 (holding the probate exception does not apply because the case ñinvolves a probate courtôs jurisdiction over trusts, not willsò). *See also Turja*, 118 F.3d at 1006ï 09 (implicitly distinguishing between a challenge to the validity of a will and a challenge to a trust).

71. *See Barnes*, 506 F. Supp. at 399 (ñControversies concerning trusts were not in 1789 part of the exclusive jurisdiction of the ecclesiastical courts.ò); Knoop v. Anderson, 71 F. Supp. 832, 837ï 38 (N.D. Iowa 1947) (ñAt the time of the adoption of the Constitution of the United States, the English High Court of Chancery had jurisdiction as to the enforcement of trusts.ò). For a detailed discussion of

courts have also suggested that since a challenge to the validity of a trust has the effect of adding assets to a probate estate (as contrasted with a challenge to the validity of a will, which has the effect of taking assets away from the probate estate), challenges to inter vivos transfers of property do not have the effect of interfering with the probate of the estate.[72]

At least one court has expressly rejected this distinction, reasoning that a trust is little more than a will substitute and thus ought not to be treated differently.[73] Other courts, while not directly rejecting the distinction, have done so implicitly by subjecting challenges to trusts to the same tests[74] that they employ for determining whether a challenge to a will falls within the probate exception.[75] Still other courts implicitly have drawn a line between testamentary and inter vivos trusts, applying the probate exception to the former but not to the latter without providing justification for drawing such a distinction.[76]

b. Suits Arising Under Federal Law and Statutory Interpleader Actions

In the typical probate-related case, the basis for federal court subject matter jurisdiction will be diversity of citizenship,[77] as the cause of action is usually either a breach of contract claim[78] or a garden-variety state common law claimð such as fraud,[79] breach of fiduciary duty,[80]

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the relationship between U.S. federal court subject matter jurisdiction and the distribution of jurisdiction among British courts in the eighteenth century, *see infra* Part III.A.

72. *See* McKibben v. Chubb, 840 F.2d 1525, 1530ï 31 (10th Cir. 1988); Gearheard v. Gearheard, 406 F. Supp. 704, 705ï 06 (S.D. Miss. 1976).

73. *See* Georges v. Glick, 856 F.2d 971, 974 n.2 (7th Cir. 1988).

74. *See supra* Part II.B.1.

75. Johnston v. Goss, No. 95-6295, D.C. CIV-94-1465-A, 1997 WL 22530, at *1 (10th Cir. Jan. 22, 1997) (unpublished decision) (applying ñrouteò test in challenge to validity of inter vivos trust); *McKibben*, 840 F.2d at 1530ï 31 (applying ñrouteò test in challenge to validity of inter vivos transfer of property); Jackson v. U.S. Natð Bank, 153 F. Supp. 104 (D. Or. 1957).

76. *See* Rousseau v. United States Trust Co. of N.Y., 422 F. Supp. 447, 450ï 60 (S.D.N.Y. 1976). *See also Jackson*, 153 F. Supp. 104 (treating a challenge to the validity of a testamentary trust as a challenge to the validity of the will itself).

77. *See, e.g.*, Ashton v. Paul, 918 F.2d 1065, 1072 (2d Cir. 1990).

78. *See, e.g.*, *Georges*, 856 F.2d at 971, 974ï 75 (adjudicating breach of contract claims against the attorney who drafted will by beneficiaries); Michigan Tech. Fund v. Century Natð Bank of Broward, 680 F.2d 736, 740 (11th Cir. 1982) (reviewing claim of breach of contract to execute mutual wills); Lamberg v. Callahan, 455 F.2d 1213, 1214ï 15 (2d Cir. 1972).

79. *See, e.g.*, Green v. Doukas, 2000 U.S. App. LEXIS 2239, at *2 (2d Cir. Feb. 15, 2000) (unpublished decision); Newland v. Newland, 82 F.3d 338, 339 (10th Cir. 1996); Vizvary v. Vignati, 134 F.R.D. 28, 29 (D.R.I. 1990); Dinger v. Gulino, 661 F.Supp. 438, 443 (E.D.N.Y. 1987).

negligence,[81] conversion,[82] unjust enrichment,[83] tortious interference with expectancy of inheritance,[84] or wrongful death[85]ð against the administrator (personally or in a representative capacity) or the beneficiaries named in the will. Indeed, the probate exception is frequently referred to as the probate exception to federal court *diversity* jurisdiction,[86] and it has only been in diversity cases that the Supreme Court has actually applied the probate exception to deny subject matter jurisdiction over a suit.[87]

The probate exception, however, is sometimes raised in cases where federal jurisdiction is not based on diversity. *Markham*, for example, was a federal question caseð although notably one in which the Court refused to apply the probate exception. In addition to diversity cases, there are a handful of probate-related suits that fall within the subject matter jurisdiction of the federal courts either because they state a claim under federal statutory or constitutional law[88] or because they fall within the interpleader jurisdiction[89] of the federal courts.

i. Statutory Interpleader Actions

80. *See, e.g.*, *Green*, 2000 U.S. App. LEXIS 2239, at *2ï *3; *Newland*, 182 F.3d at 339, 767 F.2d at 306; *Bortz*, 904 F. Supp. at 683ï 84; *Dinger*, 661 F. Supp. at 443; Tarlton v. Townsend, 337 F. Supp. 888, 892 (D. Miss. 1971); Martz v. Braun, 266 F.Supp. 134, 138 (E.D. Pa. 1967).

81. *See, e.g.*, *Newland*, 82 F.3d at 339; *Georges*, 856 F.2d at 974ï 75; *Dinger*, 661 F. Supp. at 443.

82. *See, e.g.*, *Green*, 2000 U.S. App. LEXIS 2239, at *2; *Newland*, 82 F.3d at 339; Harder v. Rafferty, 709 F. Supp. 1111, 1113 (M.D. Fla. 1989).

83. *See, e.g.*, *Green*, 2000 U.S. App. LEXIS 2239, at *2.

84. *See, e.g.*, *id.*; Seay v. Dodge, No. 95 C 3643, 1995 WL 557361, at *1, *5 (N.D.Ill. Sept. 18, 1995); Beren v. Ropfogel, Civ. A. No. 91-2425-O, 1992 WL 373935, at *1 (D.Kan. Nov. 18, 1992).

85. *See, e.g.*, *Harder*, 709 F. Supp. at 1113.

86. *E.g.*, Michigan Tech. Fund v. Century Natõl Bank of Broward, 680 F.2d 736, 739 (11th Cir. 1982).

87. Sutton v. English, 246 U.S. 199 (1918); Farrell v. OõBrien, 199 U.S. 89 (1905); Byers v. McAuley, 149 U.S. 608 (1893); Ellis v. Davis, 109 U.S. 485 (1883); *In re* Broderickõs Will, 88 U.S. 503 (21 Wall.) (1874); Gaines v. Chew, 43 U.S. (2 How.) 619 (1844).

88. *See* 28 U.S.C. Ä1331 (1994) (ñThe district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.ò).

89. The federal interpleader statute provides the federal courts with subject matter jurisdiction over interpleader actions filed by anyone in possession of money or property exceeding $500 in value, provided that two or more adverse claimants of diverse citizenship claim or may claim to be entitled to the money or the property and that the stakeholder deposits the money or property with the court upon filing suit. 28 U.S.C. Ä1335 (1994). Only minimal diversity is required: so long as at least two of the stakeholders are of different citizenship, it does not matter that there is overlap in the citizenship of the claimants. State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 530 (1967). The purpose of the federal interpleader statute is to ñprovide a forum in which a holder of money admittedly owing to someone and claimed by several parties may have the question of entitlement to the fund settled in one proceeding and be himself discharged from all further liability as to the fund.ò Mass. Mut. Life Ins. Co. v. Central-Penn. Natõl Bank, 362 F. Supp. 1398, 1401 (E.D. Pa. 1973).

A probate-related interpleader action typically arises when an individual or entity is in possession of certain assets and there is dispute as to whether the assets even belong to the deceasedôs estate.[90] All courts considering the matter have refused to apply the probate exception in the context of federal statutory interpleader actions.[91] The primary rationale for non-application of the probate exception is that by definition the action cannot impermissibly ñinterfereò with the probate proceedings because the assets at issue are not yet within the possession of the state probate court; indeed, the very purpose of the action is to determine whether or not the assets belong to the estate.[92] Moreover, even if an interpleader action would ñinterfereò with the state probate proceedings, some courts hold that Congressô express authorization to the federal courts to issue injunctions in aid of federal interpleader actions against proceedings to adjudicate rights to the property in state court proceedings[93] justifies any such interference.[94]

ii. Suits Arising Under Federal Law

Suits grounded in the RICO statute,[95] the Ku Klux Klan Act [96] and the Foreign Judicial Assistance Statute[97] have involved what might be deemed

90. *E.g.*, *Ashton*, 918 F.2d 1065 (2d 1990) (adjudicating a case in which the executor was in possession of assets that plaintiffs claimed were part of the estate); Union Natôl Bank of Texas v. Gutierrez, 764 F. Supp. 445, 445ï 46 (S.D. Tex. 1991) (denying jurisdiction over question of whether money in a bank account with a ñpayable on deathò designation was part of probate estate or was the property of the ñpayable on deathò designee).

91. *Ashton*, 918 F.2d at 1072 n.6 (ñWe have found no reported decision in which the probate exception has foreclosed a federal court from exercising interpleader jurisdiction.ò).

92. *Id.*; *Union National Bank of Texas*, 764 F. Supp. at 445ï 446. This is akin to the justification for excluding challenges to trusts from the probate exception since both interpleader actions and challenges to trusts have the effect of adding assets to the probate estate. *See supra* note 72 and accompanying text.

93. *See* 28 U.S.C. Ä 2361 (1994) (ñIn any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument, or obligation involved in the interpleader action until further order of the court.ò).

94. *Ashton*, 918 F.2d at 1072 (ñIn the face of such clear legislative direction on an issue of federal/state comity, there is little room for courts to infer that the murky probate exception prevents the injunction in the instant matter even at the cost of frustrating the statutory purpose.ò).

95. 18 U.S.C. ÄÄ1961ï 68. (1994).

96. 42 U.S.C. Ä1983 (1994).

97. 28 U.S.C. Ä1782(a) (1994) ñThe district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal.ò *Id.* A suit has also arisen under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Ä 1132 (1994), but in the only case involving such an action, the court found that the action at issue did not fall within the definition of the word ñprobateò for purposes of the exception. *See* Cmty. Ins. Co. v. Rowe, 85 F. Supp. 2d 800, 805ï 06 (S.D. Ohio 1999).

to be probate-related matters. Typically, the RICO suits involve claims that some combination of the attorneys who drafted the will, the beneficiaries of the will, and the executor of the will conspired to defraud the decedent of his or her assets and to cheat the decedentôs heirs out of their inheritance.[98] In contrast, the Ä1983 claims usually involve allegations of wrongdoing by the state probate court judge.[99] The Foreign Judicial Assistance Statute suits involve requests for U.S. judicial assistance in obtaining evidence located in the United States for use in foreign probate proceedings.[100] Courts that have adjudicated these three kinds of claims have unanimously held that the probate exception does not apply to suits arising under federal statutes,[101] although none has provided a rationale for distinguishing such claims from those grounded in diversity jurisdiction.[102]

98. *See* Glickstein v. Sun Bank/Miami, N.A., 922 F.2d 666, 668 (11th Cir. 1991) (ñalleging the defendants conspired to ópunderô the assets of [the decedent] and cheat the [heirs] out of their inheritance.ò); Maxwell v. Southwest Natôl Bank, 593 F. Supp. 250, 252ï 56 (D. Kan. 1984) (alleging the defendants ñengaged in a pattern of racketeering activities . . . whereby defendants identify and target elderly rich people for the purpose of defrauding them, their heirs and legatees out of their estatesò).

99. *See* Williams v. Adkinson, 792 F.Supp. 755, 757 (M.D. Ala. 1992) (alleging state probate court judge denied plaintiffôs rights to substantive and procedural due process and to equal protection, and that the state court decision violated the Takings Clause).

100. *See In re* Application of Horler, 799 F. Supp. 1457, 1459 (S.D.N.Y. 1992) (seeking evidence in aid of Swiss probate court proceedings).

101. *Glickstein*, 922 F.2d at 672 (ñthe probate exception is an exception to diversity jurisdiction and has no application to the federal RICO claimsò); *Cmty. Ins. Co.*, 85 F.Supp.2d at 806 (ñ[T]he probate exception has been applied only in the context of diversity jurisdiction. The Courtôs research has yielded no instances where a federal court has declined to exercise subject matter jurisdiction, under this doctrine, when based on a federal question.ò); *Williams*, 792 F. Supp. at 761 n.9 (ñWhere, as here, the plaintiff does not predicate federal jurisdiction on diversity among the parties, the probate exception is not relevant.ò); Powell v. American Bank & Trust Co., 640 F. Supp. 1568, 1574ï 75 (N.D. Ind. 1986) (holding, in suits arising under RICO and the federal securities laws, ñthat the probate exception applies to diversity jurisdiction; there is nothing to suggest that a federal court cannot take jurisdiction over a federal question raised by a plaintiffò); *Maxwell*, 593 F. Supp. at 252ï 56 (applying the probate exception to state law claims, but not to a federal RICO claim).

102. In the analogous domestic relations exception to federal court jurisdiction, it is an open question whether the exception is limited to diversity actions or whether it extends to federal question suits raising federal statutory or constitutional questions. *Compare* United States v. Bailey, 115 F.3d 1222, 1231 (5th Cir. 1997) (holding the exception applies only in diversity suits), *and* United States v. Johnson, 114 F.3d 476, 481 (4th Cir. 1997), *and* Flood v. Braaten, 727 F.2d 303, 307 (3d Cir. 1984), *with* Thompson v. Thompson, 798 F.2d 1547, 1558 (9th Cir. 1986) (holding the exception applies even to federal question cases if it would deeply involve the federal court in adjudicating domestic matters) *and* Peterson v. Babbitt, 708 F.2d 465, 466 (9th Cir. 1983) (applying the exception where a state court action concerning similar issues is pending); Hernstadt v. Hernstadt, 373 F2d 316, 318 (2d Cir. 1967) (holding the exception applies where the federal court would necessarily become enmeshed in domestic factual disputes).

C. SUMMARY

The competing shorthand formulae developed by the lower federal courts for determining the scope of the probate exception are on a collision course with one another. Suppose an heir brings an action to have a will declared invalid for lack of testamentary capacity or undue influence. The ñnature of claimò test suggests that this falls within the probate exception. But what if under state law such a challenge could be brought in a state court of general jurisdiction? The ñnature of claimò test would still classify such a claim as falling within the probate exception, but both the ñrouteò test and the ñpracticalò test would reach the opposite conclusion. And what result if the suit involved not a challenge to the validity of the will, but instead sought a declaration of the partiesô rights under the will? Here, the ñnature of claimò test would allow a federal court to exercise diversity jurisdiction even if such matters were by state law committed to the exclusive jurisdiction of specialized probate courts, but under the ñroute testòð and probably the ñpracticalò test as wellð such disputes would likely fall within the probate exception. Moreover, what result where the suit involves not a will but instead some sort of will substitute, such as an inter vivos trust, or if the suit arises under federal law? None of the tests provides answers to these questions, and the lower courts have resolved these questions on an ad hoc basis without setting forth a principled rule of decision.

These deficiencies in the lower court formulae make them unacceptable substitutes for a multi-faceted inquiry into the statutory and Article III limitations on federal court subject matter jurisdiction, the existence of a justiciable case or controversy, the applicability of the doctrine of *custodia legis* or the various doctrines of prudential abstention, and the constraints placed on federal courts by the *Erie* doctrine. Accordingly, this Article now turns to such a multi-faceted inquiry.

III. SCOPE OF FEDERAL COURT SUBJECT MATTER JURISDICTION OVER PROBATE AND PROBATE-RELATED MATTERS

A. STATUTORY LIMITATIONS ON FEDERAL COURT SUBJECT MATTER JURISDICTION

It is well-established that federal courts are courts of limited subject matter jurisdiction, subject not only to the constraints imposed by Article III,[103] but also limited to exercising subject matter jurisdiction over only those disputes for which Congress has provided a statutory grant of authority.[104] Yet many legal scholars, lawyers, and law students would be surprised to learn that federal courts lack subject matter jurisdiction over probate matters. The text of Article III contains no express limitation on the federal judicial power.[105] Moreover, neither the statutory grant of federal question jurisdiction[106] nor the grant of diversity jurisdiction[107] contains any such limitation. Thus, where the parties to a state court probate proceeding are diverse, and the value of the estate exceeds $75,000, one would expect the case could be filed in federal court or removed to federal court.

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103. Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303 (1809).

104. Powell v. McCormack, 395 U.S. 486, 512ï 13 (1969) (asserting that ña federal district court lacks jurisdiction over the subject matter . . . if the cause is not one described by any jurisdictional statuteò).

105. *See* U.S. CONST. art. III, Ä2.

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;ð to all Cases affecting Ambassadors, other public Ministers and Consuls;ð to all Cases of admiralty and maritime Jurisdiction;ð to Controversies to which the United States shall be a Party;ð to Controversies between two or more States; ð between a State and Citizens of another State; ð between Citizens of different States; ð between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Id. *Cf.* Ankenbrandt v. Richards, 504 U.S. 689, 695 (1992) (noting that in the parallel context of the domestic relations exception to federal court jurisdiction the plain language of Article III, Ä2 ñcontains no limitation on subjects of a domestic relations natureò).

106. *See* 28 U.S.C. Ä1331 (1994) (ñThe district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.ò).

107. *See* 28 U.S.C. Ä1332(a) (1994).

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is betweenð (1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state . . .as plaintiff and citizens of a State or of different States.

Id. The only mild restriction on subject matter jurisdiction over diversity suits that are related to probate matters is contained in 28 U.S.C. Ä1332(c)(2), which states that ñthe legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent.ò

The genesis of the probate exception traces back to the granting of diversity jurisdiction to the federal courts by the Judiciary Act of 1789 (ñ1789 Actò).[108] The 1789 Act gave the lower federal courts jurisdiction over ñall suits of a civil nature *at common law or in equity*, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and . . . the suit is between a citizen of the State where the suit is brought and a citizen of another State.ò[109] Courts have construed this language as limiting the grant of jurisdiction to those suits that would have been within the jurisdiction of the English courts of common law (ñsuits . . . at common lawò) and the English High Court of Chancery (ñsuits . . . in equityò) in 1789.[110] Most courts have found that the probate of wills and the administration of estates were outside the jurisdiction of both the common law courts and the High Court of Chancery in eighteenth-century England and instead were vested in Englandôs ecclesiastical, or religious, courts and thus outside the statutory grant of subject matter jurisdiction to U.S. federal courts.[111] Accepting for the moment that the scope of diversity jurisdiction under the 1789 Act was limited in this manner, one might find it strange that it would be relevant to the modern diversity statute, since the modern statute replaces the phrase ñall suits of a civil nature at common law or in equityò with the seemingly more expansive phrase ñall civil actions.ò[112] This change, however, has been described as a mere simplification of the original language in the First Judiciary Act and not an enlargement of the jurisdiction granted by the 1789 Act.[113] So it was that in *Markham v. Allen*[114] the Supreme Court set

108. Ch. 20, Ä13, 1 Stat. 73 (1789).

109. *Id.* Ä11 (emphasis added).

110. *See* Ashton v. Paul Found., 918 F.2d at 1065, 1071 (2d Cir. 1990); Georges v. Glick, 856 F.2d 971, 973 (7th Cir. 1988); Dragan v. Miller, 679 F.2d 712, 713 (7th Cir. 1982); Rice v. Rice Found., 610 F.2d 471, 475 & n.6 (7th Cir. 1979); Starr v. Rupp, 421 F.2d 999, 1004 (6th Cir. 1970); Akin v. La. Natôl Bank, 322 F.2d 749, 751 (5th Cir. 1963); Hudson v. Abercrombie, 682 F. Supp. 1218, 1219 (N.D. Ga. 1987); Barnes v. Brandrup, 506 F. Supp. 396, 398ï 99 (S.D.N.Y. 1981); Martz v. Braun, 266 F. Supp. 134, 135 (E.D. Pa. 1967). *Cf.* Lloyd v. Loeffler, 694 F.2d 489, 491 (7th Cir. 1982) (chronicling the historical basis of the domestic relations exception).

111. *Ashton*, 918 F.2d at 1071; *Georges*, 856 F.2d at 973; *Dragan*, 679 F.2d at 713; *Rice*, 610 F.2d at 475 n.6; *Starr*, 421 F.2d at 1004; *Akin*, 322 F.2d at 751; Seay v. Dodge, No. 95 C 3643, 1995 WL 557361, at *4 n.3 (N.D.Ill. Sept. 18, 1995); *Hudson*, 682 F. Supp. at 1219; *Barnes*, 506 F. Supp. at 398ï 99; *Martz*, 266 F. Supp. at 135. *See also Lloyd*, 694 F.2d at 491 (holding the same with regard to the domestic relationôs exception).

112. *See* 28 U.S.C. Ä1332(a) (1994).

113. *See Lloyd*, 694 F.2d at 491ï 92; *Dragan*, 679 F.2d at 713; *Rice*, 610 F.2d at 475 n.6; Jackson v. U.S. Natôl Bank, 153 F. Supp. 104, 107ï 08 (D. Or. 1957). *See also* Reviserôs Note to 28 U.S.C. Ä1332 (1994) (noting the change was made for the purpose of conforming with the unification of law and equity as provided for in the Federal Rules of Civil Procedure). The statutory grant of federal question jurisdiction also uses the phrase ñall civil actions,ò 28 U.S.C. Ä 1331 (1994), and while no grant of federal question jurisdiction was contained in the Judiciary Act of 1789, the predecessors to

forth the historical basis[115] for the exception, stating in dicta, ña federal court has no jurisdiction to probate a will or administer an estate, the reason being that the equity jurisdiction conferred by the Judiciary Act of 1789 . . . , which is that of the English Court of Chancery in 1789, did not extend to probate matters.ò[116]

When examined in light of one of the principles animating Article IIIôs grant of diversity jurisdictionð protecting out-of-state litigants from the actual or perceived prejudice of state court judges[117]ð the probate exception is questionable even if it applied only to the probate of a will, and not also to matters ancillary to probate. For ñ[i]f there is diversity of citizenship among the claimants to an estate, the possible bias that a state court might have in favor of citizens of its own state might frustrate the decedentôs intentions; it is just such bias, of course, that the diversity jurisdiction of the federal courts was intended to counteract.ò[118] For the most part, probate proceedings take place before specialized state courts,[119] and there is no evidence suggesting that the potential for bias against out-of-state litigants is any less than it is in state courts of general jurisdiction. If anything, the signs point in the other direction: judges who sit in some probate courts need not even be lawyers or have legal training[120] and probate courts have a reputation for bias and corruption.[121] Thus,

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Ä1331 also used the phrase ñall suits of a civil nature, at common law or in equity.ò *See* Reviserôs Note to 28 U.S.C. Ä1331 (1994).

114. 326 U.S 490 (1946).

115. *See Georges*, 856 F.2d at 973.

116. *Markham*, 326 U.S. at 494. *See also In re* Broderickôs Will, 88 U.S. (21 Wall.) 503, 509ï 11 (1874); Payne v. Hook, 74 U.S. (7 Wall.) 425, 429ï 30 (1868); Gaines v. Chew, 43 U.S. (2 How.) 619, 645 (1844).

117. *See, e.g.*, Bank of United States v. Deveaux, 9 U.S. (5 Cranch) 61, 87 (1809) (Marshall, C.J.) As Marshall observed:

> However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and a citizen, or between citizens of different states.

Id.

118. *Dragan*, 679 F.2d at 714.

119. *See* Lewis M. Simes & Paul E. Basye, *The Organization of the Probate Court in America: I*, 42 MICH. L. REV. 965, 993ï 1008 (1944) [hereinafter Simes & Basye, *Probate Court I*].

120. Lewis M. Simes & Paul E. Basye, *The Organization of the Probate Court in America: II*, 43 MICH. L. REV. 113, 138ï 40 (1944) [hereinafter Simes & Basye, *Probate Court II*].

121. *See* CHARLES REMBAR, THE LAW OF THE LAND: THE EVOLUTION OF OUR LEGAL SYSTEM 71 (1980) (noting that the New York probate courts have a history as ñfactories of corruptionò); Ronald Chester, *Less Law, but More Justice?: Jury Trials and Mediation As Means of Resolving Will Contests*, 37 DUQ. L. REV. 173, 178ï 81 (1999) (documenting instances of bias). *Cf.* CHEMERINSKY, *supra* note 27, at 290 (discussing bias concerns in diversity jurisdiction in general and citing Jerry Goldman

relegating suits brought pursuant to complex and significant federal statutes such as RICO or Ä 1983 to potentially biased and untrained state probate court judges by invoking the exception seems anathematic.[122]

Moreover, one can criticize the manner in which the Court has construed the statutory grants of subject matter jurisdiction to the federal courts. First, in light of the United Statesô long-standing view that state and theocratic institutions should remain separate, it is unlikely that the drafters of the 1789 Act would have thought of federal jurisdiction as divided among common law, equity, and ecclesiastical law. Indeed, it is likely that they thought the latter category was subsumed by the former two.[123] Second, it is unclear why this 1789 Act language should be interpreted as referring to English court practice rather than to the practice of U.S. colonial courts regarding probate and administration in the eighteenth century.[124] Third, assuming eighteenth-century English practice is the appropriate reference point, it is not at all clear that the jurisdiction of the ecclesiastical courts over probate matters was entirely exclusive of the courts of common law and equity.[125] Accordingly, this Section of the

& Kenneth S. Marks, *Diversity Jurisdiction and Local Bias: A Preliminary Empirical Inquiry*, 9 J. LEGAL STUD. 93, 97ï 99 (1980)); Note, *The Choice Between State and Federal Court in Diversity Cases in Virginia*, 51 VA. L. REV. 178 (1965)) (discussing studies indicating that 40ï 60 percent of litigants who file diversity cases in federal court cite fear of local bias as a motivating factor).

122. Indeed, the ñjudicial economyò prong of Judge Posnerôs ñpracticalò test would suggest suits raising questions of federal law should *not* be subject to the probate exception. *See supra* notes 51ï 60 and accompanying text.

123. *See* Ashton v. Paul Found., 918 F.2d at 1065, 1071 (2d Cir. 1990) (ñEcclesiastical courts are not part of the American legal tradition, and the drafters of the Judiciary Act may well have viewed chanceryôs deference to such courts as nothing but a quirk of English legal history and an anachronistic vestige of the Reformation.ò); *Dragan*, 679 F.2d at 713 (observing that ñthere was no ecclesiastical court in Americaò). *See also Lloyd*, 694 F.2d at 491ï 92 (noting, in the context of the domestic relations exception to federal court jurisdiction, that ñit would be odd if the jurisdiction of Englandôs ecclesiastical courts, theocratic institutions unlikely to be well regarded in America, should have been thought to define the limits of the jurisdiction of the new federal courtsò).

124. *See Dragan*, 679 F.2d at 713. *See also Lloyd*, 694 F.2d at 492 (noting that the justification of the domestic relations exception ñassumes without discussion that the proper referent is English rather than American practiceò).

125. *See Dragan*, 679 F.2d at 713 (noting ecclesiastic jurisdiction did not extend beyond personal property, and that the chancery court had extensive jurisdiction over inheritance of land). *Accord Ashton*, 918 F.2d at 1071. This inquiry may be to a large degree academic because in the analogous domestic relations exception, the Court has held that even though subsequent historical discoveries have made it clear that the High Court of Chancery possessed certain jurisdiction with respect to alimony and divorce actions, this would not alter the scope of the exception. Indeed, the Court concluded that the ñdomestic relations exception exists as a matter of statutory construction not on the accuracy of the historical justifications on which it was seemingly based, but rather on Congressô apparent acceptance of this construction of the diversity jurisdiction provisions in the years prior to 1948,ò when Congress substantively amended the statute but did not make mention of domestic relations, with full knowledge that the Court had interpreted the current language as excluding such suits; thus, it impliedly accepted

Article examines colonial practice as well as English practice in the late eighteenth century.

1. Division of Jurisdiction over Probate-Related Matters in British Courts in the Eighteenth Century

a. Overview

Probate-related matters in eighteenth-century England were not all relegated to the ecclesiastical courts. Rather, the complete administration of an estate could and often did require judicial proceedings in three different courts:[126] the ecclesiastical, common-law, and chancery (or equity) courts.[127] With respect to some probate-related matters, these courts exercised jurisdiction exclusively of one another, whereas in some such matters they exercised concurrent jurisdiction.[128] This section examines the jurisdiction of these three types of courts over probate-related matters.

b. Probate of Wills

i. Personal and Real Estate Distinguished

In examining the probate jurisdiction of Englandôs ecclesiastical courts, a distinction must be made between a decedentôs real estate and personal estate. The ecclesiastical courts had exclusive jurisdiction to probate wills of personal property,[129] but no jurisdiction to probate wills of

the gloss on the diversity statute. Ankenbrandt v. Richards, 504 U.S. 689, 699ï 700 (1992). Similar reasoning apparently justifies the probate exception. *See Dragan*, 679 F.2d at 713 (noting that ñCongressôs failure to repeal the exception when reenacting from time to time the grant of diversity jurisdiction to the federal courts indicates congressional acquiescenceò).

126. Simes & Basye, *Probate Court I*, *supra* note 119, at 977.

127. *Id.* at 967.

128. Where chancery and the ecclesiastical courts had concurrent jurisdiction, once one of the courts had taken jurisdiction of a case, the other would not interfere provided that the same remedies and protections were available. 2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA Ä 806, at 190ï 91 (14th ed. 1918) [hereinafter 2 STORY, COMMENTARIES].

129. 1 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 625 (7th ed. 1956); ROSCOE POUND, ORGANIZATION OF COURTS 78, 136 (1940); 2 R.S. DONNISON ROPER & HENRY HOPLEY WHITE, A TREATISE ON THE LAW OF LEGACIES *1791 (2d ed. 1848); 3 STORY, COMMENTARIES, *supra* note 42, Ä 1887, at 485; Simes & Basye, *Probate Court I*, *supra* note 119, at 968. While chancery would generally not allow a suit against an executor before the will was probated in the ecclesiastical court, in rare circumstances, arising out of the misconduct of the executor or for the protection of the property, it would exercise jurisdiction over suits against the executor by interested parties prior to probate. *Id.* at *1796. Thus, where the will was destroyed or concealed by the executor and spoliation or suppression was plainly proved, chancery may have had jurisdiction over a suit brought by a legatee. *Id.* at *1796ï 97. Moreover, where the executor engaged in misconduct, misapplied the assets, or was bankrupt or insolvent, chancery had the power to appoint a receiver after probate. *Id.* at *1797ï 98. In

real property.[130] Indeed, wills of real property were operative without any probate whatsoever, with title passing to the devisee[131] immediately on the death of the testator.[132] Any subsequent disputes with regard to title fell within the jurisdiction of the common law courts.[133] Where a will disposed of both personalty and realty, the ecclesiastical courtôs jurisdiction was effective only with respect to the personal estate.[134] Life estates were deemed to be real property, and thus within the jurisditction of the common law courts, but where the testatorôs interest in real property was less than freehold (such as a term of years), it was deemed to be personalty and thus within the jurisdiction of the ecclesiastical courts.[135]

c. Challenges to the Validity of Wills

As with probate, a distinction must be made between challenges to wills of personal estate and challenges to wills of real estate. The ecclesiastical courts had jurisdiction to set aside wills of personal estate that had been probated, and their jurisdiction in that regard was exclusive.[136] There was no direct method of setting aside a will of land, however. Thus, an heir or other interested party wishing to test the validity of a devise of land had to bring an action to try titleð such as ejectment or trespassð against the devisee-in-possession in a common law court.[137] While the jurisdictions of the ecclesiastical and the common law courts were thus exclusive in these regards, special situations arose in which chancery at least indirectly exercised jurisdiction over actions challenging wills of both real and personal property.

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the case of fraud, chancery could appoint a receiver for the purpose of preventing the destruction of the testatorôs property even while the litigation over the probate of the will was pending in the ecclesiastical court. *Id.*

130. HOLDSWORTH, *supra* note 129, at 625; ROPER & WHITE, *supra* note 129, at *1791 (ñThe jurisdiction of the Ecclesiastical Courts [was] confined to testaments merely, or in other words to dispositions of personalty: if, therefore, real estate [were] the subject of a devise to be sold for payment of debts, or portions, these Courts [could not] hold plea in relation to such disposition.ò); Simes & Basye, *Probate Court II*, *supra* note 120, at 121. Where a party to a proceeding before an ecclesiastical court believed that the court had exceeded its jurisdiction, a writ of prohibition could be obtained from the common law court. Simes & Basye, *Probate Court I*, at 972.

131. A ñdeviseeò is one who is named in a will to inherit lands or other real property. BLACKôS LAW DICTIONARY, *supra* note 11, at 453.

132. Simes & Basye, *Probate Court I*, *supra* note 119, at 971.

133. POUND, *supra* note 129, at 78. *See also infra* Part III.A.1.c.

134. Simes & Basye, *Probate Court I*, *supra* note 119, at 971.

135. 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *95 n.20 (1898); ROPER & WHITE, *supra* note 129, at *1791.

136. *See* ROPER & WHITE, *supra* note 129, at *1787.

137. Simes & Basye, *Probate Court I*, *supra* note 119, at 971.

i. Quieting Title

The method for proving and challenging the validity of wills of real estate in England posed a number of problems. First, because no court had jurisdiction to admit a will of land into probate, the only means of testing the validity of such a will was by an ejectment or trespass action, yet if the devisee was in possession, he could not bring such an action against himself, but had to instead await an action brought by an heir.[138] Moreover, devisees were sometimes subject to a never-ending stream of ejectment and trespass actions brought by different heirs.[139]

Thus, it was possible for the devisees and other interested parties to bring an action in chancery to establish the validity of a will of real estate in order to avoid interminable litigation and to give security and repose to title.[140] When such suit was brought, chancery would direct an issue of *devisavit vel non*[141] to ascertain the validity of the will, and would direct new trials to be held in a common law court until it was satisfied that there was no reasonable ground for doubt. At that point it would issue a perpetual injunction against the heirs at law and others restraining them from contesting its validity in the future.[142]

ii. Estoppel

During the course of proceedings in either chancery or a common law court, a party might either admit the validity of a will or admit facts material to its validity, but would subsequently attempt to contest its validity in proceedings before the ecclesiastical court.[143] Under such circumstances, chancery would hold the party to that admission, and would permanently enjoin that party from proceeding to challenge the will in the ecclesiastical court.[144]

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138. 4 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE Ä 1158, n.16 (5th ed. 1941) [hereinafter 4 POMEROY].

139. *See* 3 STORY, COMMENTARIES, *supra* note 42, Ä 1889, at 486.

140. *Id.*

141. *Devisavit vel non* is:

> The name of an issue sent out of a court of chancery, or one which exercises chancery jurisdiction, to a court of law, to try the validity of a paper asserted and denied to be a will, to ascertain whether or not the testator did devise, or whether or not that paper was his will.

BLACKÕS LAW DICTIONARY, *supra* note 11, at 452.

142. 3 STORY, COMMENTARIES, *supra* note 42, Ä 1889, at 486.

143. *See* ROPER & WHITE, *supra* note 129, at *1788ï 91; 3 STORY, COMMENTARIES, *supra* note 42, Ä 1887, at 485.

144. *See* sources cited *supra* note 143.

iii. Fraud

Although chancery lacked jurisdiction to set aside a will of personal estate probated in an ecclesiastical court where the grant of probate was obtained due to fraud, under certain circumstances chancery could either convert the person who committed the fraud into a constructive trustee with respect to such probate, or oblige him to consent to a repeal or revocation of the probate in the ecclesiastical court from which probate was granted.[145]

Intrinsic Fraud: Kerrich v. Bransby

In *Kerrich v. Bransby*, the decedent had left virtually all of his personal and real estate to Kerrich, whom he named as his executor by a will dated March 18, 1715.[146] Kerrich succeeded in having the will admitted into probate in the Prerogative Court of Canterbury[147] in common form,[148] and subsequently, in a contest over the validity of the instrument with the decedentôs father in that same court, the will was determined to be valid.[149] Thereafter, the decedentôs father filed a bill in chancery against, inter alia, Kerrich, in which he set forth two previously executed wills that his son had made in which he left his entire real and personal estate to his father, claimed that the March 18, 1715 will was obtained by fraud on the decedent, and asked chancery to set aside that will.[150] On appeal, the High Court of Parliament held, however, that chancery could not set aside a will for fraud. The portion of the will that dealt with personal estate could be

145. BLACKSTONE, *supra* note 135, at *95 n.20; ROPER & WHITE, *supra* note 129, at *1788 Roper and White note that there is:

> a material difference between the Court of Chancery taking upon itself to set aside a will of personal estate on account of fraud or forgery in obtaining or making that will, and taking from the party the benefit of a will established in the Ecclesiastical Court by his fraud, not upon the testator, but the person disinherited thereby.

Id.

146. 7 Brown P.C. 437 (1727).

147. The Prerogative Court of Canterbury exercised probate jurisdiction over the estates of persons owning property located in more than one diocese within the province of Canterbury, persons owning property located in both the Provinces of Canterbury and York, and those who died overseas. BLACKSTONE, *supra* note 135, at 1076; PETER WALNE, ENGLISH WILLS: PROBATE RECORDS IN ENGLAND AND WALES WITH A BRIEF NOTE ON SCOTTISH AND IRISH WILLS 19ï 20 (1964).

148. When someone died testate, there were two different procedures by which the executor could have the will probated: in common (noncontentious) form, or in solemn (contentious) form. When a will was probated in common form, notice was not issued to the heirs or to other interested parties, and actual evidence of due execution of the will was not required. Within 30 years thereafter, the executor or any other interested person could seek to have the will probated in solemn form, which required notice to interested parties as well as testimony as to the due execution of the will. An order admitting a will to probate in the solemn form was binding on all parties who appeared in the proceeding or who were given notice. Simes & Basye, *Probate Court I*, *supra* note 119, at 969.

149. *Id.* at 437ï 38.

150. *Id.* at 438.

set aside only in the ecclesiastical court, while the portion of it dealing with real estate could be set aside in a common law court by issue of *devisavit vel non*.[151]

Extrinsic Fraud: Barnesly v. Powel

In *Barnesly v. Powel*,[152] the High Court of Chancery limited the reach of the *Kerrich* decision. In *Barnesly*, the defendants had forged the decedentôs will of his real and personal estate, and by misrepresenting to the decedentôs next of kin that the forgery was in fact genuine, had obtained from the next of kin a deed in which he consented to the probate of said will.[153] The defendants presented the deed to the ecclesiastical court, which admitted the will into probate as to the personal estate.[154] In a subsequent proceeding tried in a court of common law, a jury determined that the will was a forgery.[155] In chancery, while not disputing the juryôs finding as to their interest in the decedentôs real estate, the defendants, citing *Kerrich*, protested that only the ecclesiastical court had jurisdiction to set aside the will as to the decedentôs personal estate.[156] The High Court agreed chancery lacked the power to set aside a will of personal estate for fraud, that the power to do so was lodged solely in the ecclesiastical court, and that the inconsistency between a jury at common law finding the will to be invalid as to the real estate and the ecclesiastical court having found the will to be valid as to the personal estate, although unsettling, was one which the law tolerated.[157]

Yet, the court distinguished between fraud or forgery in obtaining a will (i.e., intrinsic fraud), as was present in both *Kerrich* and *Barnesly*, and fraud in obtaining *probate* of a will (i.e., extrinsic fraud), which was present only in *Barnesly*.[158] The court reasoned that while the ecclesiastical court had jurisdiction to set aside a will, it lacked jurisdiction to determine the validity of a deed under hand and seal such as that obtained from the testatorôs next of kin.[159] Having thus determined that the deed was fraudulently obtained, the court reasoned that because equity could take away benefits to which a person was entitled if the person was

151. *Id.* at 437, 443. *Accord* 3 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE Ä913, at 583ï84 (5th ed. 1941) [hereinafter 3 POMEROY].
152. 1 Ves. Sen. 119 (1748), 1 Ves. Sen. 284 (1749).
153. 1 Ves. Sen. 119, 119ï20; 1 Ves. Sen 284, 284, 287ï88.
154. 1 Ves. Sen. 284, 284, 287ï88.
155. *Id.* at 284.
156. *Id.* at 285ï86.
157. *Id.* at 287.
158. *Id.* at 287ï88.
159. *Id.* at 288.

guilty of wrongdoing, the court could declare the defendants constructive trustees for the plaintiff for an amount equal to the value of the personal estate.[160] Because there were in fact other prior wills, however, the validity of which had not yet been determined in the ecclesiastical courts, the chancery court decreed that the defendants must consent in the ecclesiastical court to a revocation of the probate of the latter will, but be given the opportunity to prove that the prior wills— which also gave them a stake in the decedent's estate— were valid.[161]

Thus, in determining whether chancery would declare the beneficiary of a fraudulent will a trustee for those who have been defrauded, the eighteenth-century British courts appear to have drawn a line between extrinsic and intrinsic fraud: Only if the fraud is extrinsic (i.e., a fraud practiced on a party to prevent the presention of that party's case in the probate proceedings) will relief be granted; intrinsic fraud, such as the use of perjured testimony or a false will in the probate proceedings, will not suffice.[162]

d. Appointment and Removal of Administrator/Personal Representative

The ecclesiastical courts had exclusive jurisdiction to appoint an administrator (or personal representative) for the estate to dispose of the decedent's personal estate.[163] And while chancery had the primary

160. *Id.* at 289. Equity's powers in this regard presumably would apply with equal force to the real estate as well, but the *Barnesly* court did not reach this issue since there was no longer a dispute between the parties as to the disposition of the real estate.

161. *Id.* at 289–90. In *Gaines v. Chew*, the Supreme Court relied on *Barnesly* in a suit alleging that the executors fraudulently set up for probate the decedent's older will and suppressed the decedent's subsequently executed will. 43 U.S. (2 How.) 619, 627 (1844). While holding that a federal court sitting in equity lacked the authority to set up the subsequent will and set aside the probate of the former, the Supreme Court nonetheless ordered the defendants to respond to the plaintiff's inquiries about the circumstances surrounding the two wills. *Id.* The Court suggested such answers could be used as evidence in the proceedings before the state probate court to establish the latter will and revoke the former. *Id.* The Court also held that the lower federal court could order the parties to go before the probate court and consent to the probate of the latter will and revocation of the former one, and suggested that the inherent powers of a federal equity court could empower it to probate the latter will. *Id.* at 646–47. *See also In re* Broderick's Will, 88 U.S. (21 Wall.) 503, 517–19 (1874) (suggesting a federal court sitting in equity could provide a remedy in a case involving fraud if the time for challenging the will in the probate court had passed and the plaintiffs could not by that time have discovered the fraud within that time).

162. 3 POMEROY, *supra* note 151, § 913, at 583–86. *Cf.* GARY B. BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 985–86 (3d ed. 1996) (noting that U.S. courts distinguish between intrinsic and extrinsic fraud in deciding whether to enforce foreign judgments).

163. HOLDSWORTH, *supra* note 129, at 626–27; POUND, *supra* note 129, at 136. *See* 3 STORY, COMMENTARIES, *supra* note 42, § 1887, at 485; Simes & Basye, *Probate Court I*, *supra* note 119, at 968.

authority to appoint guardians for individuals and for the property of minors, the ecclesiastical courts had concurrent jurisdiction with respect to personalty.[164]

e. Administration of Estates

The ecclesiastical courts formally had jurisdiction to ñadministerò the deceasedôs personal estate,[165] but they did not order distribution of the estate.[166] Rather, the personal representative appointed by the ecclesiastical court would pay the debts of the deceased and then distribute the residue in accordance with the terms of the will.[167] Although the ecclesiastical courts had previously administered estates themselves and made the distributions, because their conduct in doing so had been negligent and in fact fraudulentð clergy as executors and administrators converted goods to their own useð Parliament limited their powers of administration to appointing an administrator from among the relatives of the deceased and delegating powers to that person.[168]

Unlike the power to admit wills of personal estate into probate and to appoint personal representatives, the ecclesiastical courtsô jurisdiction over administration was not exclusive but was instead concurrent with chancery.[169] Chanceryôs jurisdiction in this regard was invoked by the filing of a bill by a creditor or a distributee seeking to have the estate administered in chancery.[170] Chancery would then issue notices to creditors, enjoin actions by creditors in common law courts, and bring in assets and distribute them to creditors and legatees or next of kin.[171]

The rationale for chanceryôs jurisdiction over administration in a given case was two-fold. First, the administrator of an estate was in effect a constructive trustee for the creditors, legatees and distributees of the

164. Simes & Basye, *Probate Court II* , *supra* note 120, at 130. The power in general to appoint guardians for the mentally ill, however, was within chanceryôs jurisdiction. *Id.* at 132.

165. *See* POUND, *supra* note 129, at 78.

166. *See* Simes & Basye, *Probate Court I*, *supra* note 119, at 970.

167. *Id.*

168. HOLDSWORTH, *supra* note 129 at 627; William Searle Holdsworth, *The Ecclesiastical Courts and Their Jurisdiction*, *in* SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 255, 304 (Assôn of Am. Law Sch. ed., 1908).

169. *See* ROPER & WHITE, *supra* note 129, at *1793; Simes & Basye, *Probate Court I*, *supra* note 119, at 972ï 73. While the jurisdiction was concurrent, however, chancery in general would not interfere if the ecclesiastical court was already engaged in administration. ROPER & WHITE, *supra* note 129, at *1793.

170. Simes & Basye, *Probate Court I*, *supra* note 119, at 972.

171. 2 STORY, COMMENTARIES, *supra* note 128, Ä 731, at 134 n.4 (ñWhere equity has taken jurisdiction of an administration, it may proceed to distribution and relief as in probate.ò); Simes & Basye, *Probate Court I*, *supra* note 119, at 973.

deceased, and chancery, as explained below,[172] had jurisdiction to enforce trusts.[173] Second, there were often special circumstances, such as the need to take accounts and compel discovery of assets,[174] or to provide a simple, adequate, and complete remedy, that warranted chancery exercising jurisdiction.[175] In addition to chanceryôs jurisdiction to administer and settle the decedentôs estate, it had the power to decide incidental questions relating to the construction and enforcement of wills of personal property.[176]

The procedures of chancery were thus well-suited to deal with the complicated equities that might arise in the administration of an estate,[177] and stood in sharp contrast to the limited procedures available in the ecclesiastical courts.[178] In addition, the sixteenth and seventeenth centuries witnessed a rapid decay in the jurisdiction of the ecclesiastical courts as the common law court justices, who were jealous of the ecclesiastical courts, effectively crippled them by way of issuing writs of prohibition.[179] Thus, while the ecclesiastical courts in theory retained concurrent jurisdiction over the administration of estates, with time their jurisdiction was, in practice, limited to the granting of probate and to the issuance of letters of

172. *See infra* Part III.A.1.g.

173. *See* 4 POMEROY, *supra* note 138, Ä1127, at 342; 2 STORY, COMMENTARIES, *supra* note 128, ÄÄ728ï731, at 132ï34.

174. While chancery could not act upon a testamentary instrument until proven in the ecclesiastical court, it could act on a bill for discovery of assets before the will was proven or while it was the subject of litigation in the ecclesiastical court. ROPER & WHITE, *supra* note 129, at *1792.

175. 2 STORY, COMMENTARIES, *supra* note 128, Ä731, at 133. *See* 4 POMEROY, *supra* note 138, Ä1127, at 342; Simes & Basye, *Probate Court I*, *supra* note 119, at 972ï73. In common law courts, nothing more could be done than to establish the debt of the creditor: if there was any controversy as to the existence of the assets and discovery was required, or if the assets were not of a legal nature, or if a marshalling of the assets was necessary to effect due payment of the creditorôs claim, resort to chancery was necessary. 2 STORY, COMMENTARIES, *supra* note 128, Ä732, at 134. Moreover, while the ecclesiastical court could compel the administrator to provide an accounting, it lacked the power to require the administrator to prove or swear to the truth of it. *Id.* Ä733, at 135.

176. 4 POMEROY, *supra* note 138, Ä1155, at 461. Courts of equity also had the power to construe and enforce wills of real as well as personal property to the extent that they created, or their dispositions involved the creation of, trusts; however, they had no jurisdiction to interpret wills of real property that bequeath purely legal estate, as that fell within the jurisdiction of the common law courts. *Id.* Chanceryôs jurisdiction to construe wills was incident to its general jurisdiction over trusts, and it would never entertain a suit brought solely for the purpose of interpreting the provisions of a will unless further equitable relief was also sought. *Id.* Ä1156, at 462.

177. HOLDSWORTH, *supra* note 129, at 629.

178. For example, orders of the ecclesiastical court were normally enforced by excommunication; where this proved ineffective, an attachment could be sought from chancery imprisoning the party until the ecclesiastical courtôs order was obeyed, but it was only through chancery that the ecclesiastical court could so act. Simes & Basye, *Probate Court I*, *supra* note 119, at 970.

179. HOLDSWORTH, *supra* note 129, at 629.

administration[180]ð the actual administration of estates took place in chancery with far greater frequency.[181]

f. Suits for Legacies and Debts

As a general rule, the ecclesiastical courts[182] and chancery[183] exercised concurrent jurisdiction over suits for legacies:[184] in all instances, any legacy recoverable in an ecclesiastical court was also recoverable in chancery.[185] Certain types of legacies, however, only could be sued for in chancery. Among these were suits over legacies of land; as with other probate-related matters, the ecclesiastical courtsô jurisdiction was limited to personalty.[186] Chancery also exercised jurisdiction exclusive of the ecclesiastical courts over suits in which a husband sought to obtain payment of his wifeôs legacy and suits which involved a legacy to a child, for only chancery had the power to ensure that the interests of the wife and the child, respectively, were adequately protected.[187] In addition, chanceryôs jurisdiction was also exclusive where the bequest of the legacy

180. *Id.*

181. Simes & Basye, *Probate Court I*, *supra* note 119, at 972ï 73. While the jurisdiction was concurrent, however, chancery would not interfere if the ecclesiastical court was first possessed of the administration. ROPER & WHITE, *supra* note 129, at *1793.

182. In those cases where the ecclesiastical court had jurisdiction, and a common law defense was raised (such as payment as a defense in a suit for a legacy), the ecclesiastical court was required to proceed according to the rules of the common law (i.e., one witness would suffice instead of the two required under ecclesiastical practice), or a prohibition could have been be obtained in the common law courts. ROPER & WHITE, *supra* note 129, at *1792.

183. When suit was brought in chancery to recover on a legacy, chancery had the power to interpret the language effecting the gift in question, although frequently chancery would send the case out of chancery for an opinion of the courts of common law where a question of mere law arose, but this was within the discretion of chancery and certainly was not done if the construction was clear. *Id.* at *1803ï 04.

184. BLACKSTONE, *supra* note 135, at *98; 2 STORY, COMMENTARIES, *supra* note 128, Ä 797, at 186.

185. ROPER & WHITE, *supra* note 129, at *1793; 2 STORY, COMMENTARIES, *supra* note 128, Ä800, at 187ï 88. The same rationales that justified chanceryôs exercise of jurisdiction over the administration of estates justify chanceryôs exercise of jurisdiction over suits by legatees. *See supra* text accompanying notes 172ï 75. *See also* 4 POMEROY, *supra* note 138, Ä 1127, at 342; 2 STORY, COMMENTARIES, *supra* note 128, Ä800, at 188.

186. 2 STORY, COMMENTARIES, *supra* note 128, Ä809, at 191. Where a testator devised that the executor should sell his lands and that the legatee should be given a portion of the proceeds, and the executor failed to do so, the ecclesiastical court lacked jurisdiction over a suit by the legatee for payment of the legacy as it was considered to be not a legacy testamentary but rather one out of land. ROPER & WHITE, *supra* note 128, at *1791.

187. BLACKSTONE, *supra* note 135, at *95 n.20; 4 POMEROY, *supra* note 138, Ä 1128, at 343; ROPER & WHITE, *supra* note 129, at *1794ï 95; 2 STORY, COMMENTARIES, *supra* note 128, ÄÄ 805, 807, at 190ï 91.

involved the execution of express or implied trusts[188] (including charitable trusts),[189] where the assets were equitable, or where the remedy could only be enforced under the process of chancery, such as where a full discovery of assets was required.[190] In all such cases, chancery had the power to grant injunctions to protect its exclusive jurisdiction.[191]

Under certain circumstances, a legacy could be sued upon in a court of common law. First, if a legatee altered the nature of his demand by changing it into a debt or a duty (such as by accepting a bond from the executor for payment of the legacy), the legatee had the option to sue either in the ecclesiastical court on the legacy or in a common law court on the debt.[192] Second, although a specific legacy[193] contained in a will could normally be sued upon only in the ecclesiastical courts or in chancery,[194] once the executor ñacceptedò the legacy by performing some overt act[195] indicating that the property was set aside for the legatee, legal title vested in the legatee at law irrevocably, and he could bring a replevin or trover action in a common law court to assert his rights to the property.[196] The

188. 4 POMEROY, *supra* note 138, Ä1128, at 343; ROPER & WHITE, *supra* note 129, at *1794ï95; 2 STORY, COMMENTARIES, *supra* note 128, Ä802, at 188. Chanceryôs jurisdiction to enforce the execution of trusts was exclusive not only of the ecclesiastical courts, but also of the common law courts. 2 STORY, COMMENTARIES, *supra* note 128, Ä802, at 188ï89.

189. ROPER & WHITE, *supra* note 129, at *1796.

190. 4 POMEROY, *supra* note 138, Ä1128, at 343; ROPER & WHITE, *supra* note 129, at *1794; 2 STORY, COMMENTARIES, *supra* note 128, Ä808, at 191.

191. ROPER & WHITE, *supra* note 129, at *1794; 2 STORY, COMMENTARIES, *supra* note 128, Ä803, at 189. Chancery would, as a general matter, issue an injunction in any case involving a legacy in which the ecclesiastical courts could not exercise jurisdiction in a manner adequate to protect the just rights of all the parties concerned. *Id.* Ä804, at 189ï90.

192. BLACKSTONE, *supra* note 135, at *95 n.20; ROPER & WHITE, *supra* note 129, at *1799 (stating that ñthe obligee might sue for the legacy in the Ecclesiastical Court, or at Common Law upon the bond . . . the acceptance of the bond for payment of the legacy, had not totally destroyed the nature of itò).

193. A specific legacy is:

> A legacy or gift by will of a particular specified thing . . . . In a strict sense, a legacy of a particular chattel, which is specified and distinguished from all other chattels of the testator of the same kind . . . . A legacy is specific, when it is limited to a particular thing, subject, or chose in action, so identified as to render the bequest inapplicable to any other.

BLACKôS LAW DICTIONARY, *supra* note 11, at 892.

194. 2 STORY, COMMENTARIES, *supra* note 128, Ä798, at 186.

195. In some instances, the law would presume assent by the executor based on certain facts. In the case of a legacy of real property, where a devisee had possessed land for 39 years, it was presumed to be with the assent of the executor, and thus a suit over that legacy was cognizable in a court of common law. *Id.* Ä800, at 187 n.1.

196. Simes & Basye, *Probate Court I*, *supra* note 119, at 971. *See* ROPER & WHITE, *supra* note 129, at *1799ï*1802; 2 STORY, COMMENTARIES, *supra* note 128, Ä798, at 186ï87. If it subsequently appeared that there was a deficiency in the assets to pay the creditors, chancery had jurisdiction to interfere and make the legatee refund in the proportion required, whether the bequest was real or

rule was otherwise where a general legacy[197] was at issue, however, and remedy could only be had by way of an action in chancery[198] or an ecclesiastical court.[199]

Finally, contract actions that survived the death of the decedent could be brought either on behalf of or against the decedent in a common law court, with the personal representative having the capacity to sue and be sued on the decedentôs behalf.[200]

g. Trusts

In eighteenth-century England, the entire system of trusts[201] was within the exclusive jurisdiction of chancery,[202] and chancery would thus

personal. *See* ROPER & WHITE, *supra* note 129, at *1801; 2 STORY, COMMENTARIES, *supra* note 128, Ä804, at 190.

197. A general legacy is a ñpecuniary legacy which is payable out of general assets of estate of testator, being bequest of money or other thing in quantity and not separated or distinguished from others of the same kind.ò BLACKôS LAW DICTIONARY, *supra* note 11, at 892.

198. Simes & Basye, *Probate Court I*, *supra* note 119, at 972.

199. *Id.* For a time, it was thought that an action of assumpsit could be brought in a court of common law, but it was later determined that such actions could not be maintained. *Id. See also* 2 STORY, COMMENTARIES, *supra* note 128, Ä798, at 187 (noting that ñthough they have not been directly overturned in England, they have been doubted and disapproved by judges as well as by elementary writersò). As Blackstone noted:

> Cases have occurred in which *courts of common law* have assumed jurisdiction of testamentary matters, and permitted actions to be instituted for the recovery of legacies, upon proof of an express *assumpsit* or undertaking by the executor to pay them. But it seems to be the opinion of modern judges that this jurisdiction extends to cases of *specific* legacies only; for when the executor assents to those bequests, the legal interests vest in the legatees, which enable them to enforce their rights at law. It seems to be the better opinion that when the legacy is not specific, but merely a gift out of the *general* assets, and particularly when a *married woman* is the legatee, a court of common law will not entertain jurisdiction to compel payment of such a legacy, upon the ground that a court of common law is, from its rules, incompetent to administer that complete justice to the parties which courts of equity have the power, and are in the constant habit, of doing.

BLACKSTONE, *supra* note 135, at *95 n.20 (citations omitted) (emphasis in original). The general concern with allowing such actions at law appears to have been that common law courts lacked the power that chancery had to impose terms on the parties, such as in a suit by a husband for a legacy given to his wife, where there was a need to ensure that he made provisions for her and her family. *See* ROPER & WHITE, *supra* note 129, at *1797ï 98.

200. Simes & Basye, *Probate Court I*, *supra* note 119, at 971.

201. A trust is:

> An equitable right, title, or interest in property real or personal, distinct from the legal ownership thereof . . . the legal owner holds the direct and absolute dominion over the property in the view of the law; but the income, profits, or benefits thereof in his hands belong wholly or in part to others. The legal estate in the property is thus made subservient to certain uses, benefits, or charges in favor of others; and these uses, benefits, or charges constitute trusts which Courts of Equity will compel the legal owner as trustee to perform in favor of the cestui que trust or beneficiary.

2 STORY, COMMENTARIES, *supra* note 128, Ä 1304, at 648ï 49. In Roman law, trusts were not enforceable at law, but depended solely on the honor of those to whom they were entrusted, thus making chancery the appropriate court to exercise jurisdiction over their enforcement. *Id.* ÄÄ1305ï 06, at 649.

never refuse to adjudicate matters relating to trusts.[203] In addition to exercising jurisdiction over express trusts, chancery would impress and exercise jurisdiction over constructive trusts in certain situations.

In some instances, a person would die intestate relying on a promise by an heir or next of kin that he would hold the property devolving on him for the benefit of a third person or convey it to such person.[204] Similarly, a person might procure from the testator a devise or bequest through fraudulent representations that he would carry out the true purpose of the testator and apply the devise or bequest for the benefit of a third person.[205] In such instances, chancery would enforce the obligation by impressing a constructive trust on the purported beneficiary.[206]

If someone died intestate, the ecclesiastical court had the power to compel a distribution.[207] But if the testator drafted a will yet made no disposition of the residue of his personal estate, the executor was entitled at law to the surplus of the personal estate.[208] Under such circumstances, it was chancery, and only chancery, that could decree the executor to be the trustee for the next of kin and to distribute the residue of the estate among them.[209]

2. Colonial Practice

Early in the colonial period, it was not uncommon for the colonies to probate wills and administer estates legislatively rather than judicially.[210] Probate jurisdiction would often be vested in the colonial governors and their councils or the General Court,[211] which would often act as the highest tribunal for probate matters, and the governor of the colony was often made the ñordinaryò or ñsupreme ordinary.ò[212] The governor as ordinary would sometimes delegate this authority to deputies or ñsurrogates;ò[213] such was

202. BLACKSTONE, *supra* note 135, at *439; 1 JOHN NORTON POMEROY, TREATISE ON EQUITY JURISPRUDENCE Ä151, at 206 (5th ed. 1941); 2 STORY, COMMENTARIES, *supra* note 128, Ä731, at 134; ÄÄ1300ï 03, at 647ï 48.

203. BLACKSTONE, *supra* note 135, at *95.

204. 4 POMEROY, *supra* note 138, Ä1054, at 122.

205. *Id.*

206. *See id.*

207. *See* ROPER & WHITE, *supra* note 129, at *1795.

208. 2 STORY, COMMENTARIES, *supra* note 128, Ä803, at 189.

209. *See* ROPER & WHITE, *supra* note 129, at *1795; 2 STORY, COMMENTARIES, *supra* note 128, Ä803, at 189.

210. POUND, *supra* note 129, at 79.

211. Simes & Basye, *Probate Court I*, *supra* note 119, at 977.

212. POUND, *supra* note 129, at 79; Simes & Basye, *Probate Court I*, *supra* note 119, at 977.

213. Simes & Basye, *Probate Court I*, *supra* note 119, at 977.

the case in New Hampshire,[214] Massachusetts,[215] Maryland,[216] New Jersey,[217] and New York.[218] In Virginia[219] and Connecticut,[220] the power was exercised by the General Court. In Rhode Island, the jurisdiction was also exercised legislatively, but by the individual town councils instead of the state legislative body.[221] A few of the colonies, however, including North Carolina,[222] South Carolina,[223] and Georgia,[224] vested probate and administrative authority in their established superior or inferior courts,

214. POUND, *supra* note 129, at 79.

215. In 1691, the royal charter put the power over probate and administration in the colony governor who appointed surrogates to perform this function. *See* Wales v. Willard, 2 Mass. 120, 124 (1806) (Parsons, C.J.). *See also* Sean M. Dumphy, 21 MASS. PRAC. PROBATE LAW & PRACTICE Ä 1.1 (2d ed. 1997).

216. Under the system in place in Maryland in the early eighteenth century, Commissioners or Delegates of the governor were responsible for taking probate. *See* Act of 1715, ch. 39, ÄÄ 2, 29 (Md.); Smithôs Lessee v. Steele, 1 H. & McH. 419 (Md. Prov. 1771). *See also* POUND, *supra* note 129, at 79.

217. New Jersey had a Prerogative Court held by the provincial governor as ordinary with surrogates appointed throughout the state. POUND, *supra* note 129, at 79.

218. *Id.* at 80. New York had a Prerogative Court held by the governor as ordinary or to delegated surrogates. *See In re* Brickôs Estate, 15 Abb. Pr. 12 (N.Y. Sup. 1862); Weston v. Weston, 14 Johns 428 (NY.Sup. 1817). Its jurisdiction, however, was not entirely exclusive: The Court of Common Pleas had jurisdiction to probate wills and grant letters of administration in remote areas of the state and where the size of the estate was minimal. *See In re* Brickôs Estate, 15 Abb. Pr. at 12; POUND, *supra* note 129, at 80.

219. Virginiaôs statute provided:

> That the said General court shall take cognisance of, and are hereby declared to have power and jurisdiction to hear and determine, all causes, matters and things whatsoever, relating to or concerning any person or persons, ecclesiastical or civil, or to any persons or things of what nature so ever the same shall be, whether brought before them by original process, appeal from any inferior court, or by any other ways or means whatsoever.

Act of Assembly, ch. 6 (Va. 1748). *See* Bagwell v. Elliot, 23 Va. 190 (1824) (noting the general court exercised all jurisdiction, including ecclesiastical jurisdiction); Godwin v. Lunan, Jeff. 96 (Va.Gen. 1771) (holding the General Court of Virginia possessed general ecclesiastical jurisdiction); Spicer v. Pope, Jeff. 43 (Va.Gen. 1736) (noting the General Court has ña three fold jurisdiction, as a court of equity, a court of law, and it has also a jurisdiction of testamentary mattersò).

220. *See* STATE OF CONNECTICUT JUDICIAL BRANCH WEBSITE, PROBATE COURT HISTORY, *available at* http://www.jud.state.ct.us/probate/history.html (last visited Sept. 24, 2001) [hereinafter PROBATE COURT HISTORY].

221. *See* Williams v. Herrick, 25 A. 1099, 1101 (R.I. 1893) (noting King Charlesô charter gave each town council the power ñas judges of probate, to take the probate of wills and testaments, and grant administration, and all other matters relating theretoò). *See also* POUND, *supra* note 129, at 80.

222. POUND, *supra* note 129, at 79. *See* Simes & Basye, *Probate Court I*, *supra* note 119, at 978. The jurisdiction was concurrent with the Inferior Court of Pleas and the Quarter Sessions with appeal either to the Court of Chancery or to the Superior Court. POUND, *supra* note 129, at 80 & n.3.

223. POUND, *supra* note 129, at 79. *See* Simes & Basye, *Probate Court I*, *supra* note 119, at 978.

224. POUND, *supra* note 129, at 79. *See* Simes & Basye, *Probate Court I*, *supra* note 119, at 978. *See also* THE FEDERALIST NO. 83 (Alexander Hamilton) (noting Georgia had only common law courts).

while Pennsylvania[225] and Delaware[226] created Orphansô Courts vested with probate jurisdiction.

Toward the end of the colonial period, virtually all of the colonies that had not already done so vested probate and administration jurisdiction in some sort of specialized court separate from their courts of equity and common law.[227] New Hampshire,[228] Massachusetts,[229] and Connecticut[230] developed specialized probate courts. The system by which the governor appointed surrogates in New York[231] and New Jersey[232] resulted in the

225. POUND, *supra* note 129, at 79; Simes & Basye, *Probate Court I*, *supra* note 119, at 978ï 79; Act of 1713 Ä 1, 1 St. Laws 98; Good v. Good, 7 Watts. 195 (Pa. 1838); App. v. Dreisbach, 2 Rawle 287 (Pa. 1830); McPherson v. Cunliff, 11 Serg. & Rawle 422 (Pa. 1824).

226. POUND, *supra* note 133, at 79; Simes & Basye, *Probate Court I*, *supra* note 119, at 978ï 79.

227. Nonetheless, in many instances the general courts continued to exercise some probate jurisdiction even where separate courts were created. Simes & Basye, *Probate Court I*, *supra* note 119, at 977.

228. By act of the legislature, probate courts were given exclusive jurisdiction over probate in 1789. *See* Act of Feb. 3, 1789, Laws of N.H. In 1793, the state constitution was amended to so state. *See* N.H. CONST. art. 80 (stating that ñ[a]ll matters relating to the probate of wills, and granting letters of administration, shall be exercised by the judges of probateò). Following this early practice of the governor appointing commissioners to probate wills, probate judges in New Hampshire continued to be appointed by the governor. Simes & Basye, *Probate Court I*, *supra* note 119, at 980.

229. POUND, *supra* note 129, at 79; George L. Haskins, *The Beginnings of Partible Inheritance in the American Colonies*, *in* ESSAYS IN THE HISTORY OF EARLY AMERICAN LAW 204, 209 (David H. Flaherty ed. 1969); Simes & Basye, *Probate Court I*, *supra* note 119, at 1002. Appeal from these probate judges, however, was still to the governor and council. 21 SEAN M. DUMPHY, MASSACHUSETTS PRACTICE SERIES, PROBATE LAW AND PRACTICE Ä 1, 1 (2d ed. 1997). In 1784, in reliance on a provision in the 1780 Constitution, the legislature enacted a statute providing for the appointment of judges of probate courts with appeal to the Supreme Judicial Court. *See* MASS. CONST., art. V (establishing probate courts and providing that ñall . . . appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall by law make other provisionò); Peters v. Peters, 62 Mass. (8 Cush.) 529, 541ï 42 (1851); DUMPHY, *supra* note 229, at Ä1.1.

230. THE FEDERALIST NO. 83 (Alexander Hamilton); POUND, *supra* note 129, at 79. In 1666 Connecticut lodged the probate power in county courts, but created separate probate courts within each county in 1698. In the early eighteenth century, Connecticut created separate probate districts throughout the state. Judge F. Paul Kurmay, *Connecticut's Probate Courts*, QUINNIPIAC PROB. L.J. 379, 379ï 80 (1999). Appeals from the probate districts were made to the superior courts. *See* POUND, *supra* note 129, at 79.

231. In 1778, the power over probates and administration was vested by the legislature exclusively in a single judge of the Court of Probate, equal to that of the colonial governor as judge of the Prerogative Court under prior practice, but without the power to appoint surrogates. Act of Mar. 16, 1778, ch. 12, 1 LAWS OF NEW YORK (1886). *See generally In re* Brickôs Estate, 15 Abb. Pr. 12 (N.Y. Sup. Ct. 1862); Weston v. Weston, 14 Johns 428 (NY. Sup. Ct. 1817); Goodrich v. Pendleton, 4 Johns. Ch. 549 (N.Y. Ch. 1820). In 1787, the legislature passed an act providing that the governor, with the consent of council, could commission a surrogate for each county with the power over probate and administration, and providing that appeals could be brought from the surrogates to the Court of Probates. Act of Feb. 20, 1787 ch. 38, 2 LAWS OF N.Y. (1886). *See generally Brick's Estate*, 15 Abb. Pr. at 12; *Goodrich*, 4 Johns. Ch. at 549. In the post-colonial era, the practice of appointing surrogates

development of surrogatesô courts in both of those states, with New Jersey also creating a separate orphansô court and New York a separate court of probate. Maryland[233] established a system of separate orphansô courts. Virginia[234] and North Carolina[235] vested their county courts with jurisdiction over probate. South Carolina[236] created separate courts of ordinary and vested them with probate jurisdiction; eventually, Georgia[237] did as well, although not until 1799. Rhode Island,[238] however, maintained

was replaced in most places with popular elections in each county. Simes & Basye, *Probate Court I*, *supra* note 119, at 980.

232. The 1776 state constitution constituted the governor as the Ordinary or Surrogate-general. N.J. CONST. of 1776, ÆVIII; ALFRED C. CLAPP & DOROTHY G. BLACK, 7A NEW JERSEY PRACTICE, WILLS AND ADMINISTRATION Ä1915 (Rev. 3d ed. 1984) [hereinafter CLAPP] who continued to appoint deputies or surrogates until 1784, when an act was passed directing the governor as ordinary to appoint one surrogate in each county, and limiting the authority of the surrogate to the county in which the surrogate was appointed to serve. Act of Dec. 15, 1784, ch. 19, Ä 15, Patt. Laws 135, 139; CLAPP, *supra* note 232, Ä1915. The 1784 Act also created the separate Orphanôs courts and limited the surrogates to granting probate of wills and administering estates where there was no dispute; once a dispute arose, only the Orphansô courts adjudicated the dispute. Act of Dec. 15, 1784, ch. 19, Ä 15, Patt. Laws 135, 139; *In re* Whiteheadôs Estate, 94 A. 796, 797ï 98 (N.J.Prerog. Ct. 1915); *In re* Coursenôs Will, 4 N.J. Eq. 408, 412ï 15 (N.J. Prerog. Ct. 1843). The Orphanôs court was vested with both chancery and prerogative jurisdiction, and was created to remedy defects in the power of the Prerogative court with respect to the accountability of executors, administrators, and guardians. Wood v. Tallmanôs Exôrs, 1 N.J.L. 153 (N.J. 1793). The Orphanôs court had jurisdiction over all disputes relating to wills, administration, accounting. *Id.*; Act of Dec. 15, 1784, ch. 19 Ä 15, Patt. Laws 135, 139. Appeal from the Orphanôs court was to the governor as ordinary with respect to errors of fact; judicial review was available, however, as to questions of law. *Wood*, 1 N.J.L. at 153.

233. Act. of Feb., 1777, ch. 8, 1 LAWS OF MARYLAND (1799); Simes & Basye, *Probate Court I*, *supra* note 119, at 979. Initially, the Orphanôs court had the power to direct any disputed issue to be tried in a plenary proceeding and to call a jury to assist it in determining any issue. *See* Act of Feb., 1777, ch.8, Ä 9, 1 LAWS OF MARYLAND (1799). In 1798 the law was revised to require that, at the request of any party before the Orphansô court, an issue be tried in a court of common law. *See* Act of 1798, ch. 101, 2 LAWS OF MARYLAND (William Kilty ed., 1800).

234. Act of 1661, Act 64, 2 LAWS OF VIRGINIA 90 (William Waller Hening ed. 1823); Act of 1645, Act 9, 1 LAWS OF VIRGINIA 302ï 03 (William Waller Hening ed. 1823); Act of 1711, ch. 2, 4 LAWS OF VIRGINIA 12, 12ï 13 (William Waller Hening ed. 1814).

235. Act of 1789, ch. 308, Ä 1, 1 LAWS OF THE STATE OF NORTH CAROLINA 611, 611ï 12 (Hen. Potter, J.L. Taylor, & Burt Yancey eds., 1821); Williams v. Baker, 4 N.C. 401 (N.C. 1817). While the superior courts for a brief period of time had original jurisdiction over probate, Simes & Basye, *Probate Court I*, *supra* note 119, at 981, by the end of the colonial period its jurisdiction over probate was strictly appellate. Act of 1777, ch. 2, ÄÄ62, 63.

236. Zylstra v. Corp. of Charleston, 1 S.C.L. (1 Bay) 382 (S.C. Ct. Com. Pl. Gen. Sess. 1794). In 1721, before vesting the probate power in the Courts of Ordinary, South Carolina conferred probate jurisdiction upon it county and precinct courts. Simes & Basye, *Probate Court I*, *supra* note 119, at 981. Although the probate of wills as to personalty was exclusively in the courts of ordinary, while validity as to lands was in the common law courts, the parties could agree to have both questions tried in a common law court. Heyward v. Hazard, 1 S.C.L. (1 Bay) 335 (S.C. Ct. Com. Pl. Gen. Sess. 1794).

237. *See* GA. CONST. of 1798, art. III, Ä6; Harrell v. Hamilton, 6 Ga. 37, 38 (Ga. 1849). In 1778 Georgia conferred this jurisdiction on its superior courts, although probate powers were also vested in a register of probate for each county in 1777. Simes & Basye, *Probate Court I*, *supra* note 119, at 981.

probate jurisdiction in its town councils, a practice that continues to the present.[239]

The influence of England and the ecclesiastical courts on colonial practice is evident. The very names of the various colonial courts responsible for probateð prerogative, surrogate, and ordinaryð show the influence of the Church of England.[240] Indeed, many of these courts regarded themselves as ecclesiastical courts,[241] and they generally applied ecclesiastical law and followed ecclesiastical procedural rules.[242] Moreover, at least in the early stages of colonial development, the colonial courts of probate were merely given the power to probate wills and grant administration, following the English practice with respect to the ecclesiastical courts. Resort had to be made to the equity or common law courts to sell land to pay debts, to partition land in connection with distribution, to contest or to consture wills, or to adjudicate contested claims against an estate.[243]

Yet, while the English model influenced the early development of U.S. probate courts, mixed with these influences were attempts to establish single courts that possessed the combined powers of the English ecclesiastical, common law, and chancery courts.[244] One such example is the Confederate Congressô enactment of The Northwest Ordinance of 1787, which allowed for wills of real estate located in the Northwest Territory,[245]

238. *See* Act of Mar. 5, 1663, ACTS AND LAWS OF RHODE ISLAND 5 (James Franklin ed., 1730); Act of June, 1768, ACTS AND LAWS OF RHODE ISLAND 8 (Solomon Southwick ed., 1772). They also had the power to appoint guardians. *See* Tillinghast v. Holbrook, 7 R.I. 230, 248ï 50 (1862) (discussing the 1742 act).

239. Today the town councils have the option of appointing a lawyer to serve as a judge of probate. R.I. GEN. LAWS, ÄÄ8ï 9ï 2. 8ï 9ï 4 (1956); Simes & Basye, *Probate Court I*, *supra* note 119, at 980.

240. *See, e.g.*, *In re* Rothôs Estate, 52 A.2d 811, 815 (N.J. Pregrog. Ct. 1947) (noting the term ñPrerogative Courtò was the title of one of the courts of the Archbishop of Canterbury, and that ñordinaryò refers to one who exercised ecclesiastical jurisdiction in the Church of England); BLACKSTONE, *supra* note 135, at 1076; REMBAR, *supra* note 121, at 71; WALNE, *supra* note 147, at 19; Simes & Basye, *Probate Court I*, *supra* note 119, at 968.

241. *See* Kao v. Hsia, 524 A.2d 70, 73 n.7 (Md. 1987); *In re* Rothôs Estate 52 A.2d at 815. *See also* THE FEDERALIST NO. 83 (Alexander Hamilton) (describing the probate court in New York as ñanalogous in certain matters to the spiritual courts in Englandò).

242. *E.g.*, Finch v. Finch, 14 Ga. 362, 366ï 68 (Ga. 1853); Lewis v. Maris, 1 Dall. 278, 279ï 80 (Pa. 1788).

243. Simes & Basye, *Probate Court I*, *supra* note 119, at 978ï 79. *See, e.g.*, Act of Oct. 1785, ch. 61, Ä11, 12 LAWS OF VIRGINIA 140, 142 (William Waller Hening ed., 1823) (providing the validity of a will admitted to probate could be challenged in chancery up to seven years later).

244. Simes & Basye, *Probate Court I*, *supra* note 119, at 977.

245. The ñNorthwest Territoryò referred to the area directly northwest of the Ohio River. *See* ORDINANCE OF 1787: THE NORTHWEST TERRITORIAL GOVERNMENT, preamble (July 13, 1787).

with the caveat that ñsuch wills be duly proved,ò[246] a rejection of the English distinction between personal and real property with respect to the requirement of probate. Indeed, the practice growing out of the Northwest Ordinance gave much more weight to the probate process with respect to devises of land;[247] and today, virtually all states provide that wills of land, as well as personal property, must be admitted to probate, with the probate courts now having jurisdiction over both the decedentôs land and personal estate.[248]

3. Summary

If one accepts the historical gloss on Congressô statutory grant of diversity jurisdiction to the federal courts, then anything that fell within the exclusive jurisdiction of Englandôs ecclesiastical courts in 1789 falls outside the federal courtsô grant of diversity jurisdiction. Because the probate of wills of personal estate and actions to set aside the same, as well as the appointment and removal of a decedentôs personal representative, fell within the exclusive jurisdiction of the British ecclesiastical courts in 1789, the refusal of federal courts to undertake either of these activities is consistent with the historical interpretation of Congressô statutory grant of diversity jurisdiction. Similarly, the fact that chancery, and at times the courts of common law, exercised jurisdiction over suits for legacies and debts in eighteenth-century England is consistent with the modern practice, endorsed in *Markham*, of allowing federal courts to ñentertain suits óin favor of creditors, legatees, and heirsô and other claimants against a decedentôs estate.ò[249]

Fidelity to the historical interpretation of Congressô statutory grant of subject matter jurisdiction to the federal courts, however, compels the conclusion that the federal courts have jurisdiction to entertain challenges to the validity of wills of real property, since those fell within the exclusive jurisdiction of Englandôs common law courts in 1789. Likewise, federal courts should possess jurisdiction over suits involving trusts, as those fell within the exclusive jurisdiction of chancery in eighteenth-century England. Moreover, suits involving allegations of extrinsic fraud in obtaining probate of a will should be actionable in federal court proceedings. Finally, federal courts should be able to administer estates,

246. *Id.* Ä2.

247. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 249 (2d. ed. 1985).

248. 4 POMEROY, *supra* note 138, Ä1158 at 471 n.16; Simes & Basye, *Probate Court II*, *supra* note 120, at 122ï23.

249. Markham v. Allen, 326 U.S. 490, 494 (1946).

given that chancery exercised concurrent jurisdiction over administration in England in 1789. Thus, even if one accepts the use of historical English practice as a guide, the scope of the probate exception is much narrower than many courts and commentators have assumed.

B. CONSTITUTIONAL LIMITATIONS ON SUBJECT MATTER JURISDICTION

The Supreme Court has not directly addressed the question whether the probate exception is merely a gloss on Congressô statutory grants of subject matter jurisdiction to the federal courts or if it is constitutionally mandated by Article III. The Courtôs decisions with respect to both the domestic relations exception to federal court jurisdictionð the only other implied exception to federal court jurisdiction[250]ð as well as the now-defunct Act of March 2, 1867 (ñ1867 Actò),[251] however, provide strong support for the conclusion that the probate exception is merely a statutory gloss and is not constitutionally mandated.

1. Domestic Relations Exception

In *Ankenbrandt v. Richards*, a mother brought suit on behalf of her children against her ex-husband and his girlfriend, seeking monetary damages for alleged sexual and physical abuse of the children.[252] The district court concluded that it lacked subject matter jurisdiction over the suit based on the domestic relations exception to diversity jurisdiction, and the court of appeals affirmed.[253]

The Supreme Court rejected the argument that the domestic relations exception was constitutionally mandated.[254] In so holding, the Court relied on the plain language of Article III, Ä 2 of the Constitution, which ñcontains no limitation on subjects of a domestic relations nature,ò[255] and concluded that the ñdomestic relations exception exists as a matter of statutory construction.ò[256] Since the domestic relations exception to federal

250. Anthony B. Ullman, Note, *The Domestic Relations Exception to Diversity Jurisdiction*, 83 COLUM. L. REV. 1824, 1840 (1983).

251. Act of March 2, 1867, ch. 196, 14 Stat. 558.

252. 504 U.S. 689, 691 (1992).

253. *Id.* at 692.

254. *Id.* at 699ï 700.

255. *Id.* at 695. Moreover, it reasoned that since it had previously found that it had jurisdiction over appeals from territorial courts involving divorce, and that it had upheld the exercise of original jurisdiction by federal courts in the District of Columbia over divorce actions, the power to hear such cases must be within Article IIIôs grant of subject matter jurisdiction. *Id.* at 696ï 97.

256. *Id.* at 699ï 700. In his concurring opinion, Justice Blackmun expressed skepticism about the majorityôs conclusion, writing that:

court jurisdiction, like the probate exception, is based on the understanding that historically such matters were vested exclusively in the ecclesiastical courts, it would seem to follow that the probate exception is likewise not constitutionally mandated.[257]

2. Act of 1867

Section 11 of the Judiciary Act of 1789 provided the federal circuit courts[258] with original jurisdiction over ñsuits of a civil nature at common law or in equityò between a citizen of the state in which the suit is brought and a citizen of another state, if the amount in controversy exceeded five hundred dollars.[259] Parallel to this was Section 12, which provided that if a plaintiff from one state filed suit against a defendant from another state in a state court located in the plaintiffôs home state, and the amount in controversy exceeded $500, the defendant could remove the action to federal court provided he filed a petition for removal upon his first appearance in state court.[260] This system of giving the plaintiff the option

> Like the diversity statute, the federal-question grant of jurisdiction in Article III of the Constitution limits the judicial power in federal-question cases to ócases, in Law and Equity.ô Art. III, Ä2. Assuming this limitation applies with equal force in the constitutional context as the Court finds today that it does in the statutory context, the Courtôs decision today casts grave doubts upon Congressô ability to confer federal-question jurisdiction . . . on the federal courts in any matters involving divorces, alimony, and child custody.

Id. at 715 n.8 (Blackmun, J., concurring).

257. *See Ankenbrandt*, 504 U.S. at 699ï 700; Ohio *ex rel* Popovici v. Agler, 280 U.S. 379, 383ï 84 (1930); Barber v. Barber, 62 U.S. (21 How.) 582, 591ï 93 (1859).

258. Historically, the federal circuit courts were very different from the modern federal circuit courts of appeals. Under the Judiciary Act of 1789 there were two levels of trial courts: the district courts (one for each state or a portion thereof), each with its own district judge, and the circuit courts (one for each region of the country), which lacked judges of their own and sat twice each year in each district within the circuit, with panels consisting of two Justices of the Supreme Court (who would ñride circuitò) and a district court judge from within the circuit. In addition to having appellate jurisdiction over certain cases tried in the district courts, the circuit courts had concurrent jurisdiction with the state courts over diversity actions where the amount in controversy exceeded $500. *See* POUND, *supra* note 129, at 103ï 06. While a panel of the circuit court officially consisted of three members, only two were required to hear a case, so it would not be unusual for a circuit court to be equally divided. *See id.* at 104.

259. *See* Judiciary Act of 1789, ch. 20, Ä11, 1 Stat. 73 (1789).

> [T]he circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds . . . the sum or value of five hundred dollars, and . . . the suit is between a citizen of the State where the suit is brought, and a citizen of another State.

Id.

260. *See id.* Ä12.

> [I]f a suit be commenced in any state court . . . by a citizen of the state in which the suit is brought against a citizen of another state, and the matter in dispute exceeds the aforesaid sum or value of five hundred dollars . . . and the defendant shall, at the time of entering his appearance in such state court, file a petition for the removal of the cause for trial into the next circuit court . . . the cause shall there proceed in the same manner as if it had been brought there by original process.

of choosing at the outset whether to bring suit in state or federal court and then giving the out-of-state defendant a similar option if suit was initially filed in state court was long believed to be adequate to protect out-of-state plaintiffs and defendants from local state prejudices.[261] But bitter cross-state animosity engendered by the Civil War led Congress to believe the existing scheme did not adequately protect out-of-state litigants.[262] Accordingly, Congress passed the 1867 Act which provided that if at *any* time prior to the final hearing or trial of a suit, the out-of-state party had reason to believe that, due to prejudice or local influence, justice could not be obtained in state court, the out-of-state party could remove the action to federal court.[263]

In *Gaines v. Fuentes* the Supreme Court considered the impact of the 1867 Act on probate matters.[264] Citizens of Louisiana filed a petition in a Louisiana state probate court seeking revocation of a decree of probate of a will on the ground that the testimony upon which it was admitted was false and insufficient.[265] One of the decedentõs heirs, a citizen of New York, was served the petition and subsequently sought to remove the action to federal circuit court pursuant to both Section 12 of the 1789 Act as well as to the 1867 Act, but the state court denied the applications and subsequently revoked the probate of the will.[266] The decision was affirmed by the Louisiana Supreme Court.[267]

The U.S. Supreme Court reversed.[268] The dissent reasoned that although Section 12, the removal provision of the 1789 Act, referred only

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Id.

261. *See* Chicago & N.W. R. Co. v. Whitton, 80 U.S. (13 Wall.) 270, 289 (1871).

262. *See* Gaines v. Fuentes, 92 U.S. 10, 19 (1875).

263. Act of March 2, 1867, ch. 196, 14 Stat. 558. The statute declared:

> That where a suit is now pending, or may hereafter be brought in any State court, in which there is controversy between a citizen of the State in which the suit is brought and a citizen of another State, and the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs, such citizen of another State, whether he be plaintiff or defendant, if he will make and file, in such State court, an affidavit stating that he has reason to and does believe that, from prejudice or local influence, he will not be able to obtain justice in such State court, may, at any time before final hearing or trial of the suit, file a petition in such State court for the removal of the suit into the next circuit court of the United States to be held in the district where the suit is pending, and offer good and sufficient surety for his entering in such court . . . the suit shall there proceed in the same manner as if it had been brought there by original process.

Id.

264. 92 U.S. 10 (1875).

265. *Id.* at 11.

266. *Id.* at 11ï 12.

267. *Id.* As to both applications, the state court reasoned that the federal court would lack jurisdiction over the subject matter of the dispute. *See id.*

268. *Id.* at 22.

to ña *suit* . . . by a citizen of the State in which the suit is brought against a citizen of another State,ò it had to be read *in pari materia* with Section 11, the provision vesting the circuit courts with original jurisdiction over ñall *suits of a civil nature, at common law or in equity* . . . between a citizen of the State where the suit is brought and a citizen of another State.ò[269] When read in conjunction with the provision of Section 12 providing that a removed action would óproceed [in the circuit court] in the same manner as if it had been brought there by original process,ò the dissent concluded only those actions that could have been originally brought in the circuit court could be removed from the state court.[270] Since the probate of wills did not fall within the jurisdiction of the courts of law or equity in England, the dissent reasoned such an action could not be removed to federal court, since it could not be brought in federal court as an original matter.[271]

The majority appeared to accept this interpretation of Section 12, but ruled that removal would nonetheless be appropriate under the 1867 Act.[272] The majority noted that the scope of the federal judicial power under Article III is broader than the scope of jurisdiction in Section 12 of the 1789 Act, extending to ñ*controversies* between citizens of different States.ò[273] The majorityð in apparent reliance on the broader language of the 1867 Act providing for removal of any ñsuit . . . in which there is a *controversy* between a citizen of the State in which the suit is brought and a citizen of another Stateò[274]ð reasoned that the ñact covered every possible case involving controversies between citizens of the State where the suit was brought and citizens of other States.ò The Court concluded the scope of cases that could be *removed* to federal court under the 1867 Act was broader than the scope of cases that could have been initially brought in federal court pursuant to Section 11 of the 1789 Act.[275] Accordingly, even if a suit was not one at law or in equity, such as an action to revoke probate, it could nonetheless be removed to federal court under the 1867 Act. The dissent, while disagreeing with the construction of the 1867 Act nonetheless conceded that Congress had the power under Article III to provide for jurisdiction over such suits.[276]

269. *Id.* at 22ï 23 (Bradley, J., dissenting).
270. *Id.* at 23ï 24.
271. *Id.* at 24ï 25.
272. *Id.* at 18.
273. *Id.* at 17 (quoting U.S. CONST. art. III, Ä2).
274. 1867 Act, *supra* note 263.
275. *Gaines*, 92 U.S. at 19ï 20.
276. *Id.* at 26 (Bradley, J., dissenting).

Thus, both the majority and the dissent agreed Congress had the constitutional authority to vest the federal courts with subject matter jurisdiction over probate-related matters, and indeed the majority thought that Congress had done so in the 1867 Act. Therefore, while the 1867 Act was seldom invoked and has since been repealed,[277] its scope as interpreted and approved by the Court in *Gaines* provides strong support for the conclusion that the exception is only a statutory limitation rather than a constitutional one.

IV. DOCTRINE OF *CUSTODIA LEGIS*

Courts have held generally that the probate exception does not apply to inter vivos trusts and possibly not to testamentary trusts either. This means that a federal court not only may adjudicate the validity of a trust where the requirements of diversity jurisdiction are satisfied, but may also administer the trust, including ordering an accounting, removing and appointing trustees, and demanding that funds be distributed.[278] Yet because this is an exercise of diversity jurisdiction, state courts, whether courts of probate or courts of general jurisdiction, will have concurrent jurisdiction over such actions, raising the possibility that two courtsð one state and one federalð will simultaneously attempt to administer the same trust.

The Supreme Court addressed this situation in *Princess Lida of Thurn & Taxis v. Thompson*.[279] The case dealt with a trust created in 1906 for the benefit of Princess Lida and her children by her ex-husband.[280] In 1910, the ex-husband repudiated the agreement.[281] Princess Lida, her children,

277. In 1875, Congress enacted a comprehensive removal statute, *see* Act of March 3, 1875, 18 Stat. 470, but the statute was subsequently held not to rescind the Act of March 2, 1867. *See* Hess v. Reynolds, 113 U.S. 73, 79ï 80 (1885). In 1887, Congress passed yet another comprehensive removal statute, *see* Act of March 3, 1887, 24 Stat. 553, and while not intending to repeal the Act of March 2, 1867, *see* 18 CONG. REC. (1887) (reporting statement of Representative David Culberson that ñ[t]he bill does not propose to repeal the act of 1867ò), the 1887 act did have the effect of limiting removal to actions that could originally be brought in federal court. *See* Cochran & the Fid. & Deposit Co. v. Montgomery County, 199 U.S. 260, 269 (1905).

> [U]nder the judiciary act of 1789 such cases were only liable to removal from a state to the Circuit Court ás might . . . have been brought before the Circuit Court by original processô [and] it was ruled that this was otherwise under the act of March 2, 1867.
>
> But the act of 1887 restored the rule of 1789, and, as we have heretofore decided, those suits only can be removed of which the Circuit Courts are given original jurisdiction.

Id. Nonetheless, it was not until 1948 that the right to remove a case due to prejudice or local influence was eliminated. *See* 28 U.S.C. Ä1441 (1948).

278. *See supra* Part II.B.2.a.

279. 305 U.S. 456 (1939).

280. *Id.* at 457ï 58.

281. *Id.* at 58.

and one of the trustees brought suit in the state Court of Common Pleas in Pennsylvania to enforce the trust.[282] After a hearing, the state court entered a decree sustaining the agreement and ordering the ex-husband to perform accordingly.[283] The court approved a modification of the agreement in 1915, and in 1925 ultimately entered in the record that the decree had been satisfied.[284]

On July 7, 1930, the trustees filed a partial account of the trust in the same court.[285] The following day, Princess Lida and one of her children filed a suit in equity in federal district court against the two living trustees and the administrator of the deceased trustee, alleging mismanagement of trust funds and requesting that the trustees be removed and that all defendants be made to account for and repay the losses of the estate.[286] The defendants asked the state court to enjoin the plaintiffs from pursuing their claim in federal court.[287] While that request was pending, the federal court temporarily enjoined the defendants from further prosecuting the state court action.[288] Nonetheless, the Pennsylvania Supreme Court affirmed an order of the state court enjoining the plaintiffs from further pursuing their federal court action.[289]

Thus, the U.S. Supreme Court was ñconfronted with a situation where each of the courts claiming jurisdiction has restrained the parties before it from proceeding in the other.ò[290] The Court held that although the trust *res* was unquestionably within the state courtôs jurisdiction when the action was brought to compel the ex-husbandôs compliance with the agreement, jurisdiction terminated once the decree in equity had been satisfied by the ex-husband.[291] It then addressed whether the subsequent filing of the trusteesô account gave the state court jurisdiction over the trust, and if so, the nature and extent of that jurisdiction.[292] The Court noted that as a matter of state law, the state Court of Common Pleas for the county in which any trustee is located is vested with jurisdiction over any matter that concerns the integrity of the trust *res*.[293] Additionally, the Court stated that

282. *Id.*
283. *Id.*
284. *Id.* at 459.
285. *Id.*
286. *Id.*
287. *Id.*
288. *Id.* at 460.
289. *Id.*
290. *Id.* at 461.
291. *Id.*
292. *Id.* at 462.
293. *Id.* at 462ï 63.

jurisdiction is invoked either by a petition by a trustee or upon application of an interested person,[294] and that the state court cannot effectively exercise such jurisdiction without having a substantial measure of control over the trust funds.[295]

The Court concluded that if the federal court action had been one in which the plaintiffs merely sought adjudication of their right to participate in the *res* or as to the quantum of their interest in it, the federal action could proceed.[296] ñ[W]here the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other.ò[297] Yet, ñif the two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one court must yield to that of the other.ò[298] According to the Court, where both proceedings are in rem, the first one assuming jurisdiction had jurisdiction over the *res*.[299] Because the federal action related solely to administration and restoration of the corpus, it was a proceeding in rem and thus had to yield to the pre-existing state court proceedings with respect to the same *res*.[300]

This doctrine, known as *custodia legis*, or the doctrine of prior exclusive jurisdiction,[301] is ñnothing more than a practical ófirst come, first serveô method of resolving jurisdictional disputes between two courts with concurrent jurisdictionò[302] that prevents the problems that could arise from inconsistent orders with respect to the same property. In considering the application of the doctrine, lower courts have identified several elements that must be present before the doctrine can be invoked to divest the federal court of jurisdiction.

294. *Id.* at 463.
295. *Id.* at 467.
296. *Id.* at 466ï 67.
297. *Id.*
298. *Id.* (citing Penn. Gen. Cas. Co. v. Pennsylvania, 294 U.S. 189, 195 (1935)).
299. *Id.*
300. *Id.* at 467.
301. *E.g.*, Espat v. Espat, 56 F. Supp.2d 1377, 1381 (M.D. Fla. 1999).
302. BLACKôS LAW DICTIONARY, *supra* note 11, at 384 (citing Coastal Prod. Credit Assôn v. Oil Screw ñSantee,ò 51 B.R. 1018, 1020 (S.D. Ga. 1985)).

First, the state court action must have been filed before the federal court action,[303] whether by virtue of a specific action filed in the state court with regard to the administration of the trust that is pending[304] at the time the federal suit is filed, such as an accounting,[305] or because as a matter of state law the state court exercised continuing jurisdiction over the corpus of a trust once its jurisdiction has been initially invoked.[306] Second, the doctrine only applies if both actions are in rem or quasi in rem.[307] Thus, even if the state court exercises continuing jurisdiction over the administration of the trust, the doctrine of *custodia legis* poses no bar to the federal court entertaining, say, a suit for damages by the trust beneficiaries against the trustees personally.[308] Third, the state court must have the power to adjudicate all of the claims effectively.[309] This means that if one of the claims raised in the federal proceeding falls outside the jurisdiction of the state court in which the pre-existing action is pending, the doctrine would not bar the federal court from exercising jurisdiction over the claim.[310] A few courts have held the doctrine applies only if, as a matter of state law, the specialized state court in which the prior action was filed had

303. *See* Reichman v. Pittsburgh Natõl Bank, 465 F.2d 16, 18 (3d Cir. 1972); Schonland v. Schonland, No. Civ. 397CV558 (AHN), 1997 WL 695517, at *2 (D. Conn. Oct. 23, 1997); Lancaster v. Merchants Natõl Bank, 752 F. Supp. 886, 888 (W.D. Ark. 1990), *rev'd*, 961 F.2d 713 (8th Cir. 1992); Barnes v. Brandrup, 506 F. Supp. 396, 399ï 400 (S.D.N.Y. 1981). Even if the state court action is filed subsequent to the federal court action, however, it has been suggested that the federal court may have discretion to dismiss the action in favor of the state court. *See* Holt v. Werbe, 198 F.2d 910, 915 (8th Cir. 1952).

304. Thus, the mere fact that accountings have previously been filed and approved in state court proceedings does not mean that those proceedings have been first filed, as those proceedings terminate once the court approves the accountings. *See Barnes*, 506 F. Supp. at 401. *See also Holt*, 198 F.2d at 915ï 16 (stating that doctrine does not apply if the prior state court action was dismissed without prejudice before the federal action was filed).

305. *See* Weingarten v. Warren, 753 F. Supp. 491, 495 (S.D.N.Y. 1990).

306. *See id.*; *Barnes*, 506 F. Supp. at 400ï 01; Rousseau v. United States Trust Co. of N.Y., 422 F. Supp. 447, 458 (S.D.N.Y. 1976).

307. *See* Starr v. Rupp, 421 F.2d 999, 1004ï 06 (6th Cir. 1970).

308. *See* Martz v. Braun, 266 F.Supp. 134, 138 (E.D. Pa. 1967). *See also Holt*, 198 F.2d at 915.

> The rule is otherwise in actions strictly in personam . . . . Nor does the rule . . . apply where the purpose of the action in the second court is merely to establish the right or interest of the plaintiff in property within the possession or control of the first court, so long as the second court does not interfere with the proceedings in the first court or with the control of the property in its custody.

Id.

309. *See* Schonland v. Schonland, No. Civ. 397CV558(AHN), 1997 WL 695517, at *2 (D. Conn. Oct. 23, 1997); *Barnes*, 506 F. Supp. at 399ï 400.

310. *See* Akrotirianakis v. Burroughs, , 262 F. Supp. 918, 921ï 25 (D. Md. 1967) (holding that doctrine does not apply where the state probate court with jurisdiction over the ongoing administration of the trust would not have jurisdiction over an action, as such an action is committed to the state courts of equity).

jurisdiction exclusive of the state courts of general jurisdiction.[311] Other courts have held this has no effect on the doctrineôs applicability.[312] Finally, while the doctrine would not appear to bar a party from removing such a proceeding from state court to federal court,[313] one court has denied jurisdiction over a removed case where the state court had already issued a temporary restraining order on the property at issue before the timely notice of removal had been filed.[314]

V. PRUDENTIAL ABSTENTION

While the probate exception excludes most probate and probate-related matters from federal court, some arguably probate-related matters, such as those involving trusts or arising under federal statutes, would still seem to fall within the federal courtsô subject matter jurisdiction. Yet even if a claim survives the probate exception proper, it is far from certain that the federal court will adjudicate the claim. For ñ[e]ven where a particular probate-like case is found to be outside the scope of the probate exception, the district court may, in its discretion, decline to exercise its jurisdiction,ò[315] particularly for matters that are ñon the vergeò of the probate exception.[316] This is because the federal courts have at their disposal a variety of abstention doctrines including *Pullman*,[317] *Burford*,[318] *Thibodaux*,[319] *Younger*,[320] *Colorado River*,[321] *Brillhart-Wilton*,[322] as well

311. *See Schonland*, 1997 WL 695517 at *2 (holding that the doctrine is inapplicable because under state law the probate courts have concurrent (rather than exclusive) jurisdiction over trusts with the ordinary courts of equity); *Barnes*, 506 F. Supp. at 401ï 02 (distinguishing *Princess Lida* from the instant case because in Princess Lida the state probate court jurisdiction was exclusive, whereas the state probate court jurisdiction in the instant case is concurrent with the state courts of general jurisdiction).

312. *See* Beach v. Rome Trust Co., 269 F.2d 367, 371ï 72 (2d Cir. 1959); Rousseau v. United States Trust Co. of N.Y., 422 F. Supp. 447, 458 (S.D.N.Y. 1976).

313. *E.g.*, *Schonland*, 1997 WL 695517 at *1ï *2.

314. *See In re* Thomas & Agnes Carvel Found., 36 F. Supp.2d 144, 149ï 51 (S.D.N.Y. 1991).

315. Rice v. Rice Found., 610 F.2d 471, 477 (7th Cir. 1979) (stating that ñthe scope of the probate exception does not necessarily define the area in which the exercise of federal judicial power is appropriateò).

316. Phillips, Nizer, Benjamin, Krim & Ballon v. Rosenstiel, 490 F.2d 509, 516 (2d Cir. 1973) (asserting that ñthere is particularly strong reason for abstention in cases which, though not within the exceptions for matters of probate and administration or matrimony and custody actions, are on the verge, since like those within the exception, they raise issues ón which the states have an especially strong interest and a well-developed competence for dealing with themôò). *Accord* Celentano v. Furer, 602 F. Supp. 777, 781ï 82 (S.D.N.Y. 1985).

317. R.R. Commôn of Texas v. Pullman Co., 312 U.S. 496, 498ï 501 (1941).

318. Burford v. Sun Oil Co., 319 U.S. 315, 316ï 34 (1943).

319. Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25, 29ï 31 (1959).

320. Younger v. Harris, 401 U.S. 37 (1971).

321. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813ï 19 (1976).

as the *Rooker-Feldman*[323] doctrine and the principle that equity can only ñdo justice completelyò and not ñby halves.ò[324] Each of these doctrines has directly or indirectly been addressed, and in some cases applied, by the federal courts in considering probate-related claims falling outside of the probate exception. This Section briefly describes each of these doctrines, and examines the manner and extent to which the federal courts have applied them to probate-related claims.

A. *PULLMAN* ABSTENTION

Pullman abstention provides that where a suit presents an unsettled question of state law and a given interpretation of that state law would allow the court to avoid reaching a federal constitutional question raised in the suit, the federal district court should suspend the federal court action and allow the parties to resolve the unsettled question of state law in state court.[325] Thus, where the validity of a state statute is challenged on federal constitutional grounds and the meaning of the statute is sufficiently uncertain that a narrow interpretation of it by the state courts could avoid reaching the constitutional question, *Pullman* abstention is warranted.[326] It is likewise warranted if a suit alleges that the defendantôs conduct violated the U.S. constitution as well as a provision of state law.[327] Moreover, *Pullman* abstention applies even when suit is brought pursuant to Ä1983.[328] But where the state law being challenged is sufficiently clear, or the plaintiff opts to challenge the defendantôs conduct only on federal constitutional grounds (leaving out state law claims), *Pullman* abstention does not apply.[329] *Pullman* abstention is likewise inapplicable where only non-constitutional federal issues, such as the interpretation of a federal statute, can be avoided.[330] Although typically invoked in suits for

322. Wilton v. Seven Falls Co., 515 U.S. 277, 282ï 288 (1995); Brillhart v. Excess Ins. Co. of Am., 316 U.S. 491, 494ï 97 (1942).

323. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482ï 87 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 414ï 16 (1923).

324. *See* Jackson v. U.S. Natôl Bank, 153 F. Supp. 104, 117ï 18 (D. Or. 1957) (citing Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 46 (1909)).

325. *See* R.R. Commôn of Texas v. Pullman Co., 312 U.S. 496, 498ï 501 (1941).

326. *See* Fornaris v. Ridge Tool Co., 400 U.S. 41, 44 (1970).

327. *See Pullman*, 312 U.S. at 498. *See also* Siler v. Louisvillle & Nashville R.R. Co., 213 U.S. 175 (1909).

328. *See* Askew v. Hargrave, 401 U.S. 476, 477ï 78 (1971).

329. *Compare* Wisconsin v. Constantineau, 400 U.S. 433, 439 (1971), *with id.* at 440ï 43 (Burger, C.J., dissenting).

330. *See* Propper v. Clark, 337 U.S. 472, 490 (1949).

injunctive relief, it can also be raised in suits where money damages are sought.[331]

Under *Pullman* abstention, the federal court does not usually[332] dismiss the proceedings, but rather stays them pending the outcome of the proceedings in state court.[333] While the federal court plaintiff is required to inform the state court of the federal constitutional challenges pending in the federal court proceedings so that the state court can interpret the state law at issue in light of the constitutional challenge,[334] the plaintiff has the right to return to federal court after the state court has resolved the state law question to have the constitutional questions resolved in federal court, unless the plaintiff voluntarily submits the constitutional claims to the state court.[335]

Although courts have considered *Pullman* abstention in the context of probate-related proceedings, they have been reluctant to apply it in the probate context. Usually this is because such claims do not typically involve unsettled questions of state law coupled with the possibility of avoiding a federal constitutional question.[336]

B. *THIBODAUX* AND *BURFORD* ABSTENTION

Thibodaux abstention is applicable where the suit raises difficult questions of state law bearing on substantial public policy matters that are more important than the result of the case before the court.[337] Thus, for example, a suit challenging a municipalityôs authority to exercise eminent domain as a matter of state law raises a question of sufficient public import to justify *Thibodaux* abstention,[338] but abstention appears to be justified only where the issue of state law is unclear.[339] Courts that have considered

331. *E.g.*, *Fornaris*, 400 U.S. at 41ï 44; United Gas Pipe Line Co. v. Ideal Cement Co., 369 U.S. 134, 135ï 36 (1962).

332. In some instances, a state court will refuse to decide the issue of state law so long as the federal action is pending. In those circumstances, the federal district court must dismiss the case, but without prejudice, and the plaintiff is free to return to federal court after the state court proceedings have concluded. *See* Harris County Commôrs v. Moore, 420 U.S. 77, 78 (1975).

333. *See Pullman*, 312 U.S. at 501ï 02.

334. *See* Govô & Civic Employees Org. Comm. v. Windsor, 353 U.S. 364, 366 (1957).

335. *See* England v. Louisiana State Bd. of Med. Examôrs, 375 U.S. 411, 435 (1964) (Douglas, J., concurring).

336. Bergeron v. Loeb, 777 F.2d 792, 798 n.7 (1st Cir. 1985); Celentano v. Furer, 602 F. Supp. 777, 781 (S.D.N.Y. 1985); Martz v. Braun, 266 F. Supp. 134, 139 (E.D. Pa. 1967).

337. *See* Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 814 (1976) (citing Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25 (1959)).

338. *See Thibodaux*, 360 U.S. at 42ï 44 (Brennan, J., dissenting).

339. *See* Allegheny County v. Frank Mashuda Co., 360 U.S. 185, 188ï 90 (1959).

Thibodaux abstention in probate-related proceedings have found it inapplicable, either because there is no difficult question of state law,[340] or because no issue transcends the importance of the case.[341] Indeed, one court has held that any case raising difficult issues of state law bearing on policy problems of substantial public import would likely invoke the probate exception and if it did not, it probably would not qualify for *Thibodaux* abstention.[342]

Burford abstention is related to but distinct from *Thibodaux* abstention. Unlike *Thibodaux* abstention, for *Burford* abstention to apply the question of state law need not itself be determinative of state policy (like a determination of the scope of a cityôs eminent domain powers), and thus the resolution of the specific question before the court need not transcend the result in the case before the court.[343] Rather, the question is whether the very act of a federal court adjudicating a case would itself in some way be ñdisruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.ò[344]

Burford v. Sun Oil Co. was a challenge to the granting of four permits by a state regulatory commission to drill oil wells.[345] Because the state believed that the regulation of natural resources such as oil could not effectively be accomplished piecemeal but had to be centralized to be effective, it had vested a single state district court with authority to review the commissionôs decisions for ñreasonableness,ò which was itself subject to review by a single court of appeals and ultimately the state supreme court. Thus the state avoided the problem of having conflicting determinations by individual district and appellate courts across the state.[346] While the determination of whether it was reasonable to issue any given permit would not likely have a transcendent effect on the state, the very fact of federal courts determining the reasonableness of the issuance of permits ñwhere the State had established its own elaborate review system for dealing with the geological complexities of oil and gas fields, would have had an impermissibly disruptive effect on state policy for the management of those fields.ò[347] Unlike *Pullman* abstention, the *Burford*

340. *See* Beach v. Rome Trust Co., 269 F.2d 367, 374 (2d Cir. 1959); *Martz*, 266 F. Supp. at 139.

341. *Martz*, 266 F. Supp. at 139.

342. *See* Seay v. Dodge, No. 95 C 3643, 1995 WL 557361, at *7 (N.D. Ill. Sept. 18, 1995) (describing *Thibodaux* abstention without directly citing *Thibodaux*).

343. *See Colorado River Water Conservation Dist.*, 424 U.S. at 814ï 15.

344. *See id.* at 814.

345. 319 U.S. 315, 317 (1943).

346. *Id.* at 326ï 27.

347. *Colorado River Water Conservation Dist*, 424 U.S. at 815.

abstention plaintiff has no right to return to federal district court to have her federal claims adjudicated, but is instead entitled only to review in a federal court by way of a writ of certiorari by the U.S. Supreme Court.[348]

There are a number of limitations on the use of *Burford* abstention. First, while not an explicit limitation, the Supreme Court has considered the doctrine only in the context of state-regulated industries.[349] Second, *Burford* abstention can be used only when there is a difficult, uncertain question of state law.[350] Finally, *Burford* abstention is available only where plaintiffs seek injunctive or declaratory relief.[351]

Courts that have considered *Burford* directly have rejected its application in the context of probate-related matters, usually finding either no difficult question of state law, no overarching state policy with respect to settling such claims, or both.[352] One court has found that few cases would likely present such a question without also invoking the probate exception to federal subject matter jurisdiction.[353]

In *Ankenbrandt v. Richards* the Court considered the applicability of *Burford* abstention in the analogous context of the domestic relations exception.[354] The Court stated, in dicta, that *Burford* abstention *might* be relevant in cases outside the domestic relations exception where, say, the federal case was filed prior to effectuation of a divorce, alimony, or child custody decree, and the suit depended on a determination of the *status* of the parties.[355] Yet even in such cases, the Court reasoned that the federal court should retain jurisdiction, rather than abstain permanently, to ensure prompt and just disposition of the matter upon the determination by the

348. *See Burford*, 319 U.S. at 334.

349. *See* New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350 (1989) (reviewing utility rate regulation); Alabama Pub. Serv. Commôn v. S. Ry. Co., 341 U.S. 341 (1951) (considering local train service regulation); *Burford*, 319 U.S. 315 (1943) (evaluating regulation of oil drilling rights).

350. Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 726ï 27 (1996); *Colorado River Water Conservation Dist*, 424 U.S. at 814; *Burford*, 319 U.S. at 327ï 28; Johnson v. Rodrigues, 226 F.3d 1103, 1112 (10th Cir. 2000).

351. *Quackenbush*, 517 U.S. at 731. The Supreme Court has, however, left open the possibility that *Burford* might support a federal courtôs decision to postpone adjudication of a damages claim pending resolution by the state courts of an unsettled question of state law. *See Quackenbush*, 517 U.S. at 730ï 31.

352. *See* Bergeron v. Loeb, 777 F.2d 792, 800 (1st Cir. 1985); Cmty. Ins. Co. v. Rowe, 85 F. Supp. 2d 800, 807 n.10 (S.D. Ohio 1999); Seay v. Dodge, No. 95 C 3643, 1995 WL 557361, at *7 (N.D.Ill. Sept. 18, 1995); Celentano v. Furer, 602 F. Supp. 777, 781 (S.D.N.Y. 1985).

353. *See Seay*, 1995 WL 557361, at *7.

354. *Ankenbrandt*, 504 U.S. 689 (1992).

355. *Id.* at 705ï 06.

state court of the relevant issue,[356] making it more akin to *Pullman* abstention. Thus, where a federal court is adjudicating a probate-related matter, *Ankenbrandt* might suggest that if a suit is filed on behalf of or against an estate, and the proper adjudication of such suit depends upon the state probate court appointing a personal representative for the estate with the capacity to sue and be sued on behalf of the estate, the federal court should retain jurisdiction of the suit pending the state courtôs action.[357]

C. *YOUNGER* ABSTENTION

The *Younger* abstention doctrine initially was directed only at suits that might interfere with ongoing state criminal proceedings. It provided that the federal courts would not, absent special circumstances,[358] entertain jurisdiction over suits seeking either an injunction against pending[359] state criminal proceedings[360] or a declaratory judgment against a state criminal statute under which prosecutions are pending.[361] The rationales behind this form of abstention are that equity need not act in such instances since an adequate remedy exists by way of a defense in the state criminal proceedings,[362] as well as respect for the distinct sovereignty of the states.[363] An exception to *Younger* abstention exists where the state tribunal cannot or will not entertain the federal constitutional claims.[364]

356. *Id.* at 706 n.6. *See also Quackenbush*, 517 U.S. at 730ï 31 (noting that although a dismissal under *Burford* is not appropriate in a damages action, a stay pending a determination by the state court on a disputed question of state law might be warranted).

357. *Cf. Seay*, 1995 WL 557361 at *7ï *8.

358. These special circumstances were limited to cases where the prosecution was in bad faith or done to harass the defendant, or where the statute was ñflagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.ò Younger v. Harris, 401 U.S. 37, 52ï 54 (1971) (quoting Watson v. Buck, 313 U.S. 387, 402 (1941)).

359. The Supreme Court subsequently expanded the doctrine to cover not only pending criminal proceedings, but also those that are commenced against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court. *See* Hicks v. Miranda, 422 U.S. 332, 349 (1975).

360. *See Younger*, 401 U.S. at 53.

361. *See* Samuels v. Mackell, 401 U.S. 66, 73 (1971). The Supreme Court has reserved the question whether *Younger* applies in suits for money damages, although the Court has held that such suits should be stayed pending the resolution of the state prosecutions. *See* Deakins v. Monaghan, 484 U.S. 193, 202 (1988).

362. *See Younger*, 401 U.S. at 43ï 44; Douglas v. City of Jeannette, 319 U.S. 157, 163 (1943).

363. *See Younger*, 401 U.S. at 43ï 44.

364. *See* Moore v. Sims, 442 U.S. 415, 425ï 26 (1979).

Subsequent decisions have expanded *Younger* to cover civil enforcement proceedings brought by the state,[365] including those prosecuted in administrative tribunals that are judicial in nature.[366] In a few instances, *Younger* abstention has been applied in suits involving purely private parties where the ñStateôs interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.ò[367] While such cases had the potential to expand greatly the reach of *Younger* abstention, the Supreme Court has subsequently limited the application of *Younger* where only private persons are parties to ñcivil proceedings involving certain orders that are uniquely in furtherance of the state courtsô ability to perform their judicial functions.ò[368]

Almost all[369] courts that have considered *Younger* abstention in the context of probate-related matters have held it to be inapplicable.[370]

D. *COLORADO RIVER* ABSTENTION

In *Colorado River Water Conservation District v. United States*,[371] the Supreme Court set forth the general principle that ñ[a]bstention from the

365. *See id.* at 417 (holding that the court should abstain from hearing state custody claim for children allegedly abused by parents); Trainor v. Hernandez, 431 U.S. 434, 493 (1977) (holding that the court should abstain from state claim to recover welfare payments obtained by fraud); Huffman v. Pursue, Ltd., 420 U.S. 592, 595, 607 (1975) (directing the court to apply *Younger* abstention principles in a state action to declare an obscene movie a nuisance).

366. Ohio Civil Rights Commôn v. Dayton Christian Sch., Inc., 477 U.S. 619 (1986) (holding that district court should have abstained from reviewing an administrative complaint for employment discrimination); Middlesex County Ethics Comm. v. Garden State Bar Assôn, 457 U.S. 423, 432ï 44 (1982) (holding that federal court should abstain from reviewing an attorney disciplinary proceeding).

367. Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 11 (1987) (refusing to enjoin successful plaintiff in state court proceeding from exercising its right to demand that the defendant post a bond as a condition of prosecuting an appeal where the state court defendant was claiming that it could not afford a bond and that the rule denied it due process). *See also* Juidice v. Vail, 430 U.S. 327, 337ï 39 (1977) (refusing to enjoin state court judges from using their statutory contempt procedures on the ground that they denied due process).

368. New Orleans Pub. Serv. Inc. v. Council of New Orleans, 491 U.S. 350, 367 (1989).

369. One court has applied it in the context of a purely private probate-related dispute, yet the court seemed completely to misunderstand the *Younger* doctrine. *See* Williams v. Adkinson, 792 F.Supp. 755, 766 (M.D. Ala. 1992) (reasoning that *Younger* applied because such suits involve the ñimportant state interest in the óorderly and just distribution of a decedentôs property at death.ôò).

370. *See* Reinhardt v. Kelly, 164 F.3d 1296, 1302 (10th Cir. 1999); Celentano v. Furer, 602 F. Supp. 777, 781ï 82 (S.D.N.Y. 1985). In the related area of domestic relations matters, the Supreme Court in *Ankenbrandt v. Richards* held *Younger* abstention would not apply unless there were pending state proceedings and a valid assertion that there were important state interests at stake. 504 U.S. 689, 705 (1992).

371. 424 U.S. 800 (1976).

exercise of federal jurisdiction is the exception, not the rule,ò[372] and that the federal courts have a ñvirtually unflagging obligation . . . to exercise the jurisdiction given them.ò[373] The court, however, found abstention is in some instances appropriate where there are parallel federal and state proceedings involving substantially the same parties and the same issues.[374]

The Court in *Colorado River* identified four factors that counsel in favor of a federal court abstaining in favor of a state forum: (1) where maintaining both actions would require the state and federal courts to exercise simultaneous jurisdiction over a single *res*; (2) if the state court forum is more convenient for the parties; (3) where the concurrent state proceedings were initiated before the federal proceedings; and (4) where doing so would avoid piecemeal litigation.[375] The Court has since added two factors weighing *against* abstention: (1) where federal law provides the rule of decision on the merits[376]; and (2) where the state court proceedings will probably be inadequate to protect the plaintiffôs rights.[377]

In probate related matters, avoiding piecemeal litigation tends to be the focal point, and is most easily rejected if there are no pending state court proceedings,[378] if the plaintiff in the federal action is not party to the state probate proceedings,[379] or if the issues in the probate proceeding are different from those raised in the federal action.[380] In addition, since state probate courts often have jurisdiction only over the probate of the will and the administration of the estate, common law and statutory claims among parties will often need to be filed in some other court, such as a state court of general jurisdiction, and thus, declining jurisdiction will not avoid piecemeal litigation.[381] Moreover, in such circumstances, it seems the

372. *Id.* at 813.
373. *Id.* at 817.
374. *See id.* at 818.
375. *See id.* at 818ï 19.
376. Moses H. Cone Memôl Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 23, 26 (1983).
377. *Id.* at 26.
378. *See Bergeron*, 777 F.2d at 799.
379. *See* Celentano v. Furer, 602 F. Supp. 777, 782 (S.D.N.Y. 1985).
380. *See* Seay v. Dodge, No. 95 C 3643, 1995 WL 557361, at *8, *9 (N.D.Ill. Sept. 18, 1995). There is, however, authority suggesting that the federal and state actions need not be precisely identical: it is enough that ñsubstantially the same parties are contemporaneously litigating substantially the same issues in another forum.ò Caminiti & Iatarola, Ltd. v. Behnke Warehousing, Inc., 962 F.2d 698, 700 (7th Cir. 1992).
381. *See Moses H. Cone Mem'l Hosp.*, 460 U.S. at 20 (holding that under such circumstances, ña decision to allow [such claims] to be decided in federal rather than state court does not *cause* piecemeal resolution of the partiesô underlying disputes,ò making abstention unwarranted) (emphasis added); Giardina v. Fontana, 733 F.2d 1047, 1053 (2d Cir. 1984). *See also Caminiti*, 962 F.2d at 703 (noting that where the probate court lacks jurisdiction over a particular claim as against a particular party, it

federal forum is, strictly speaking, the first concurrent forum in which jurisdiction was obtained, since the only other forum with concurrent jurisdiction would be a state court of general jurisdiction, in which a new action would have to be filed.[382] Where the issues raised in the federal action are the same as those raised in the state court action, however, the desire to avoid piecemeal litigation weighs in favor of abstention.[383]

E. *BRILLHART-WILTON* ABSTENTION

Under the Federal Declaratory Judgments Act (ñFDJAò),[384] where an actual controversy exists, the federal courts have the authority to declare the rights of the parties vis-¨-vis one another or vis-¨-vis a piece of property. Such a declaration has the effect of a final judgment[385] and may have a preclusive effect in subsequent proceedings where the declaratory judgment involved a question of federal law.[386] Where suit is brought pursuant to the FDJA, federal courts have substantially greater discretion to abstain in favor of pending state court proceedings than is permitted under the *Colorado River* standard[387] because of the permissive wording of the FDJA.[388] Unlike *Colorado River* abstention, the Court has neither enumerated comprehensive factors for guiding the district courtôs abstention discretion with respect to suits brought pursuant to the FDJA, nor has it set forth the outer boundaries of the abstention discretion.[389] Rather, the Court has suggested only that the decision be guided by ñconsiderations of practicality and wise judicial administration,ò[390] and that

weighs against abstaining under *Colorado River*); United States v. Pikna, 880 F.2d 1578, 1582 (2d Cir. 1989) (holding a dismissal of a suit over which the state probate court would likely lack jurisdiction an abuse of discretion).

382. *Giardina*, 733 F.2d at 1053.

383. *Caminiti*, 962 F.2d at 701ï02; Estate of Groper by Groper v. County of Santa Cruz, No. C-93-20925 RPA, 1994 WL 680041, at *4ï *5 (N.D.Cal. Dec. 1, 1994).

384. 28 U.S.C. Ä2201 (1994).

385. *See id.*

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Id.

386. Steffel v. Thompson, 415 U.S. 452, 476ï 78 (1974) (White, J., concurring); David L. Shapiro, *State Courts and Federal Declaratory Judgments*, 74 NW.U. L. REV. 759, 764, 769 (1979).

387. Wilton v. Seven Falls Co., 515 U.S. 277, 286ï 88 (1995).

388. *Id.* at 286 (quoting 28 U.S.C. Ä2201(a) (1988 ed. Supp. V) providing the court ñ*may* declare the rights and other legal relations of any interested party seeking such declarationò (emphasis added)).

389. *See id.* at 290; Brillhart v. Excess Ins. Co., 316 U.S. 491, 495 (1942).

390. *Wilton*, 515 U.S. at 288.

the district court examine the scope of the pending state court proceeding, the nature of the available defenses, and whether the claims of all interested parties could satisfactorily be adjudicated.[391] All of these considerations are subject to review only for abuse of discretion.[392] As with *Pullman* abstention, the appropriate course is to stay the proceedings rather than dismiss them outright to protect against the possibility that the state court case might fail to resolve the controversy.[393]

While probate proceedings are pending, a party will sometimes file suit under the FDJA, based on the diversity of the parties, seeking a declaration as to the validity of a trust or other similar instrument, even though the validity of the instrument can or is being litigated in the probate proceedings.[394] In such instances, federal courts generally exercise their broad, unbounded discretion to decline jurisdiction, usually reasoning it would be vexatious and uneconomical for the federal court to proceed where a parallel state court suit is addressing the exact same question.[395]

F. ROOKER-FELDMAN DOCTRINE

The *Rooker-Feldman* doctrine holds that the federal district courts lack jurisdiction over collateral attacks on judgments rendered in state court proceedings.[396] The rationale for the doctrine is that the statutory grant of subject matter jurisdiction to the federal district courts is strictly original, and for district courts to entertain actions to reverse or modify the judgments of state courts due to errors, even constitutional errors, would be an exercise of appellate jurisdiction, and only the Supreme Court has been granted appellate jurisdiction over judgments rendered by the statesô highest courts.[397] This doctrine is thus invoked if a litigant attempts directly to challenge the judgment of a state probate court in an independent federal court action.[398]

391. *Id.* at 282ï 83; *Brillhart*, 316 U.S. at 495.

392. *Wilton*, 515 U.S. at 289ï 90.

393. *Id.* at 288 n.2.

394. *E.g.*, Fay v. Fitzgerald, 478 F.2d 181 (2d Cir. 1973); *In re* Thomas & Agnes Carvel Found., 36 F. Supp.2d 144, 152 (S.D.N.Y. 1991) (requesting declaration as to the validity of a reciprocal agreement to execute mirror image wills); Davis v. Hunter, 323 F. Supp. 976, 978ï 80 (D. Conn. 1970) (requesting declaration that inter vivos trust is invalid).

395. *Fay*, 478 F.2d at 183. *Accord In re* Thomas & Agnes Carvel Found., 36 F. Supp.2d at 153ï 54; Cenker v. Cenker, 660 F. Supp. 793, 796 (E.D. MI 1987); DiTinno v. DiTinno, 554 F. Supp. 996, 1000 (D. Mass. 1983).

396. *See* District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 414ï 16 (1923).

397. *Rooker*, 263 U.S. at 415ï 16.

398. *See* Williams v. Adkinson, 792 F.Supp. 755, 761ï 62 (M.D. Ala. 1992).

G. EQUITY CAN ONLY ñDO JUSTICE COMPLETELYò

A well-established principle dictates that ña court of equity ought to do justice completely and not by halves.ò[399] Thus, where an equity court has jurisdiction over only one aspect of a suit but not another, it will decline jurisdiction. Accordingly, some federal courts have declined jurisdiction over probate-related matters falling outside the probate exception when there are related matters to be decided that fall within the probate exception. Thus, where the decedentôs capacity to execute a will as well as an inter vivos trust is in dispute, courts have invoked this principle to decline jurisdiction over the validity of the inter vivos trust, even though that is outside of the probate exception, since the validity of the will must be adjudicated in another forum.[400] Additionally, where there is a dispute over the validity of a testamentary instrument as well as its interpretation, federal courts have declined to construe the terms of the instrument on the ground that its validity is still being adjudicated in ongoing probate proceedings.[401]

H. ñJAMBALAYAò ABSTENTION

A number of courts adjudicating probate-related matters have either abstained or suggested they could abstain on grounds other than those contained in the recognized categories of abstention. These courts frequently rely on the greater expertise of state courts in dealing with such issues based on the state courtsô daily experience,[402] familiarity with the litigation,[403] and the greater interest of the states in the outcome of the litigation.[404] Abstaining courts also cite judicial economy,[405] federalism,[406] and the intertwining of federal and state court proceedings.[407] Abstaining

399. Camp v. Boyd, 229 U.S. 530, 551 (1913). *Accord* Jackson v. U.S. Natôl Bank, 153 F. Supp. 104, 117 (D. Or. 1957) (citing Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 46 (1909)).

400. Davis v. Hunter, 323 F. Supp. 976, 978ï 80 (D. Conn. 1970).

401. *Jackson*, 153 F. Supp. at 116ï 18.

402. *See* Rice v. Rice Found., 610 F.2d 471, 477 (7th Cir. 1979); Bassler v. Arrowood, 500 F.2d 138, 142ï 43 (8th Cir. 1974); *Cenker*, 660 F. Supp. at 795ï 96; Rousseau v. United States Trust Co. of NY, 422 F. Supp. 447, 459 (S.D.N.Y. 1976).

403. *See Rice*, 610 F.2d at 478; Pappas v. Travlos, 662 F. Supp. 1149, 1150 (N.D. Ill. 1987); *Cenker*, 660 F. Supp. at 795ï 96.

404. *See Pappas*, 662 F. Supp. at 1151ï 52; *Cenker*, 660 F. Supp. at 795ï 96.

405. *Reichman*, 465 F.2d at 18; Jones v. Harper, 55 F. Supp. 2d 530, 534 (S.D.W. Va. 1999); *Rousseau*, 422 F. Supp. at 459.

406. *Jones*, 55 F. Supp. 2d at 534.

407. *See Rice*, 610 F.2d at 478; *Pappas*, 662 F. Supp. at 1151ï 52; *Cenker*, 660 F. Supp. at 795ï 96.

courts, however, provide little basis for determining their authority to abstain under these circumstances.

I. ABSTENTION INVOLVING SPECIALIZED STATUTORY GRANTS OF JURISDICTION

In *Markham v. Allen*,[408] the Supreme Court, after holding that the suit did not fall within the probate exception, considered whether the federal court should nonetheless have abstained in light of ongoing state court proceedings, and the fact that the suit involved issues of state law.[409] The Court rejected the argument that the mere need to interpret state law was a sufficient basis for abstention,[410] and held that where a substantive federal statute specially confers jurisdiction on the district court independent of the statutes generally governing federal court jurisdiction, abstention is not appropriate.[411]

Thus, under *Markham*, abstention in a probate-related matter would not be appropriate where suit is brought under a federal substantive statute for which the federal courts have subject matter jurisdiction independent of the general grant of federal question jurisdiction contained in Ä 1331. Accordingly, civil rights actions brought pursuant to ÄÄ 1983, 1985 and 1986,[412] suits brought under the RICO statute,[413] and statutory interpleader actions[414]ð the provisions under which most non-diversity probate-related

408. 326 U.S 490 (1946).

409. *Id.* at 495.

410. *Id.*

411. *Id.* at 495ï 96.

412. *See* 28 U.S.C. Ä1343(a) (1994).

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Id.

413. *See* 18 U.S.C. Ä 1964(a) (1994) (ñThe district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders.ò); *id.* Ä 1964(c) (ñAny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court.ò).

414. *See* 28 U.S.C. Ä1335 (1994) (ñThe district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader.ò).

suits arise[415]ö would seem to present situations where abstention would not be warranted under *Markham*.

VI. PARSING THE PROBATE EXCEPTION

The various formulae established by the federal appeals courts for determining whether a suit falls within the probate exception[416] provide a rough guide for determining when the probate exception applies. As shown above, however, the formulae fail to provide courts with an accurate means of determining whether a given probate-related suit falls within the exception.

While no court has explicitly broken down the probate exception into its component parts, one can infer from the Supreme Courtôs precedents that the exception ought to be viewed as an amalgam of five distinct rules: the *Erie* doctrine, the limits on Congressô grant of subject matter jurisdiction to the federal courts, *custodia legis* (the doctrine of prior exclusive jurisdiction), the Case or Controversy requirement, and prudential abstention. Only by applying these five rules in tandem can one determine whether a given suit falls within the probate exception.

A. STEP 1: THE *ERIE* DOCTRINE

The Supreme Courtôs probate exception precedents have not directly considered the *Erie* aspect of the exception because all but one of the Courtôs probate exception precedents pre-date the 1938 *Erie* decision.[417] Prior to *Erie* and its progeny, the federal courtsô equity jurisdiction was uniform throughout the country,[418] and thus it was unnecessary for the federal courts to consider whether a given equitable or legal remedy was provided for under state law. Consequently, the Courtôs probate exception precedents do not address this issue.

Yet today it goes without saying that when a federal court exercises diversity jurisdiction over a claim, it must apply the law of the state in

415. *See supra* Part II.B.2.b.

416. *See supra* Part II.B.1.

417. *Markham v. Allen* is the only post-*Erie* probate-exception precedent. Sutton v. English, 246 U.S. 199 (1918); Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33 (1909); Farrell v. OôBrien, 199 U.S. 89 (1905); Byers v. McAuley, 149 U.S. 608 (1893); Hess v. Reynolds, 113 U.S. 73 (1885); Gaines v. Fuentes, 92 U.S. 10 (1875); *In re* Broderickôs Will, 88 U.S. (21 Wall.) 503 (1874); Payne v. Hook, 74 U.S. (7 Wall.) 425 (1868); Gaines v. Chew, 43 U.S. (2 How.) 619 (1844).

418. *E.g.*, *Payne*, 74 U.S. (7 Wall.) at 430 (noting the equity power of the federal courts is uniform throughout the country and equal to that of the English high court of chancery).

which it sits as the rule of decision for that claim.[419] Accordingly, in determining whether a federal court can entertain a probate-related cause of action, reference to state law is often necessary. For example, if an heir files a diversity suit alleging an independent common law tort claim for intentional interference with an expectation of an inheritance, the first step is to determine whether state law recognizes such a cause of action.[420] If there is no such cause of action under state law, the suit is not dismissed for lack of subject matter jurisdiction, but rather for failure to state a claim for which relief can be granted.[421]

B. STEP 2: SCOPE OF THE FEDERAL COURTSô SUBJECT MATTER JURISDICTION

The mere existence of a legal or equitable remedy under state law is not enough for a federal court to exercise diversity jurisdiction over a probate-related cause of action. For there to be statutory federal court subject matter jurisdiction, the legal or equitable remedy must fall within the traditional scope of the English courts of chancery and common law in 1789.[422] Thus, if a state abolishes its probate courts and vests its courts of general jurisdiction with jurisdiction over the probate of wills, a federal court sitting in diversity would not, under the current interpretation of the statutory grant of subject matter jurisdiction, be able to exercise jurisdiction over an action to probate the will.[423]

The various formulae developed by the federal courts fail to capture this step in the probate exception analysis. Because the ñrouteò test allows

419. *See* Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

420. *See generally* Allen v. Hall, 139 F.3d 716 (9th Cir. 1998); Firestone v. Galbreath, 25 F.3d 323 (6th Cir. 1994); Moore v. Graybeal, 843 F.2d 706, 710 (3d Cir. 1988); DeWitt v. Duce, 675 F.2d 670 (5th Cir. 1982).

421. *Compare* FED. R. CIV. P. 12(b)(1) (action dismissed for lack of jurisdiction over the subject matter), *with* FED. R. CIV. P. 12(b)(6) (action dismissed for failure to state a claim upon which relief can be granted because no cause of action existed under federal statute). *See also* Hartford Fire Ins. Co. v. California, 509 U.S. 764, 813 (1993) (Scalia, J., dissenting).

422. *See* Guaranty Trust Co. of N.Y. v. York, 326 U.S. 99, 105 (1945) The Court in *Guaranty Trust Co. of N.Y.* held that notwithstanding the *Erie* doctrine and its applicability to suits in equity, it is not the case:

> that whatever equitable remedy is available in a State court must be available in a diversity suit in a federal court . . . . Equitable relief in a federal court is of course subject to restrictions: the suit must be within the traditional scope of equity as historically evolved in the English Court of Chancery.

Id.

423. *Cf.* Hamilton v. Nielsen, 678 F.2d 709, 710 (7th Cir. 1982) (ñThis is not to say, of course, that federal courts can now probate wills in Illinois because the state has abolished its specialized probate courts. Probate remains a peculiarly local function which federal courts are ill equipped to perform.ò).

federal court jurisdiction where a remedy is available in a state court of general jurisdiction, it would incorrectly conclude that the federal court has subject matter jurisdiction over challenges to the validity of a will where state law provided such a legal or equitable cause of action. Under the ñpracticalò test, where the state has eliminated its separate probate courts, federal court jurisdiction would be appropriate under the ñrelative expertiseò prong of the test. Where the state provides for an independent action to challenge the validity of a will, federal court jurisdiction would be appropriate under the ñjudicial economyò prong of the test. To be sure, the ñnature of claimò test would prevent the federal court from adjudicating a state-created equitable or legal action challenging the validity of a will admitted to probate, as that would go to the ñvalidityò of the instrument. Yet it would fail to capture the various exceptions to the ecclesiastical courtsô exclusive jurisdiction over such challenges in eighteenth-century England.

Since the historical limitation on federal court subject matter jurisdiction is a mere gloss on the general statutory grants of subject matter jurisdiction and is not a constitutional limitation, where Congress creates a federal legal or equitable remedy and specifically provides for federal court subject matter jurisdiction over such actions, as with the RICO statute, this step in the analytical framework of the probate exception would be inapplicable.[424]

C. STEP 3: *CUSTODIA LEGIS*

The ñrouteò test for determining when the probate exception applies turns on whether the particular action could be heard in a state court of general jurisdiction, or if it is cognizable only in a state probate court. If the latter, federal court diversity jurisdiction does not exist.[425] To be sure, even some of the older Supreme Court cases have made reference to there being federal jurisdiction where an action can be brought in the state courts of general jurisdiction.[426]

424. *Cf.* Markham v. Allen, 326 U.S. 490, 495ï 96 (1946) (holding where a federal substantive statute specially confers subject matter jurisdiction on the federal district courts independently of the statutes governing generally the jurisdiction of the federal courts, prudential abstention is not appropriate); *Ashton*, 918 F.2d at 1072 (holding the probate exception inapplicable to suits brought under the federal interpleader statute).

425. *See supra* Part II.B.1.b.

426. *See* Gaines v. Fuentes, 92 U.S. 10, 20ï 21 (1875); *In re* Broderickôs Will, 88 U.S. (21 Wall.) 503, 519ï 20 (1874).

Yet this would fly in the face of firmly established precedent holding that the states cannot defeat the federal constitutional and statutory right of a diverse party to remove a suit to federal court (or to file it there as an original matter) by mere internal arrangement of the distribution of jurisdiction between their probate courts and their courts of general jurisdiction.[427]

What the ñrouteò test is really trying to capture is nothing more than a short-hand approximation of the *custodia legis* doctrine, under which two courts cannot exercise concurrent jurisdiction over a proceeding in rem. As a general rule, when a controversy is relegated by state law to the state probate courts (as opposed to the state courts of general jurisdiction), it is usually because it is part of the ongoing in rem proceeding and not an independent in personam action. But since a state could choose to vest its probate courts with jurisdiction over independent in personam actions, such as wrongful death suits or actions by creditors, the ñrouteò test works only as a close approximation of the doctrine of *custodia legis*, and cannot always be correct.

427. *See* Waterman v. Canal-Louisiana Bank & Trust Co., 215 U.S. 33, 43ï 44 (1909) (holding a federal court has subject matter jurisdiction to adjudicate suits by creditors, legatees, and heirs to establish their claims against an estate, notwithstanding state statutes giving state probate courts exclusive jurisdiction over such suits); Clark v. Bever, 139 U.S. 96, 102ï 03 (1891); Hess v. Reynolds, 113 U.S. 73, 77 (1885) (ñ[T]he controverted question of debt or no debt is one which, if the representative of the decedent is a citizen of a State different from that of the other party, the party properly situated has a right, given by the Constitution of the United States, to have tried originally, or by removal in a court of the United States, which cannot be defeated by State statutes enacted for the more convenient settlement of estates of decedents.ò); Payne v. Hook, 74 U.S. (7 Wall.) 425, 429ï 30 (1868) (holding the constitutional and statutory right of a citizen of one state to have their suit against a citizen of another state heard in a federal tribunal would be abrogated if diversity jurisdiction were subject to the internal distribution of judicial power within a state); Greyhound Lines, Inc. v. Lexington State Bank & Trust Co., 604 F.2d 1151, 1154ï 55 (8th Cir. 1979) (holding the decision of state to give county courts exclusive jurisdiction over claims against the estates of decedents does not act as a restriction on federal court diversity jurisdiction); Swan v. Estate of Monette, 400 F.2d 274, 276 (8th Cir. 1968) (citing Yonley v. Lavender, 88 U.S. (21 Wall.) 276 (1874); *Beach*, 269 F.2d at 372ï 73 (citing McClellan v. Carland, 217 U.S. 268, 281ï 82 (1910)); Borer v. Chapman, 119 U.S. 587 (1887); *Hess*, 113 U.S. at 76ï 77; *Gaines*, 92 U.S. at 10 (holding if something is not deemed to be a ñpurely probate matterò the federal courtôs jurisdiction is not ousted by the mere internal arrangement of the state courts by way of putting a matter within the exclusive jurisdiction of the probate courts); Barnes v. Brandrup, 506 F. Supp. 396, 399 (S.D.N.Y. 1981) (citing Beach v. Rome Trust Co., 269 F.2d 367, 373 (2d Cir. 1959) for the proposition that controversies that were not regarded as probate matters in 1789 could not be kept from federal court jurisdiction based on internal arrangements of the state courts); Bryden v. Davis, 522 F. Supp. 1168, 1171 (E.D. Mo. 1981) (noting states cannot impose restraints on federal jurisdiction by creating probate courts and vesting them with exclusive jurisdiction); Jackson v. U.S. Natôl Bank, 153 F. Supp. 104, 111ï 12 (D. Or. 1957) (holding the states cannot limit federal court jurisdiction, and that if a right was enforceable in the English High Court of Chancery in 1789 and could be enforced in personam in some state court ï any court in the state, even a probate court, then there can still be federal court jurisdiction).

Indeed, the *custodia legis* rule underlies the principle that while a federal court sitting in diversity can establish the debts against the estate, the debt established must take the place and share of the estate as administered by the probate court. The debt established cannot be enforced by process directly against the property of the decedent, since for the federal court to order the distribution of the assets of an estate that is being administered by a state probate court would mean that both courts were exercising jurisdiction over the same *res*.[428]

Accordingly, the issue is not in what court the action can be brought, but whether it is an independent *inter partes* action. The Supreme Court has explained that ñaction or suit *inter partes*ò refers:

> only to independent controversies *inter partes*, and not to mere controversies which may arise on an application to probate a will because the state law provides for notice, or to disputes concerning the setting aside of a probate, when the remedy to set aside afforded by state law is a mere continuation of the probate proceeding.[429]

Under this step of the probate exception inquiry, the key is to examine the stateôs statutory scheme to determine whether the suit is a mere continuation of the proceedings to probate the will or is instead an independent *inter partes* action.[430] For example, where state law requires a suit challenging the will be brought before the same judge who is exercising jurisdiction over the probate of the will and the administration of the estate, the action will be considered to be a mere continuation of the

428. *See* Byers v. McAuley, 149 U.S. 608, 614 (1893). The Court reasoned ñwhere property is in the actual possession of one court of competent jurisdiction, such possession cannot be disturbed by process out of another court.ò *Id.* Hence the statement in *Markham* that

> federal courts of equity have jurisdiction to entertain suits ón favor of creditors, legatees and heirsô and other claimants against a decedentôs estate óto establish their claimsô so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court.

Markham, 326 U.S. at 494.

429. Farrell v. OôBrien, 199 U.S. 89, 110 (1905) (emphasis in original). *See generally id.* at 114ï16 (holding that where a proceeding to contest a will under state law can only be heard before the court that admitted the will to probate, and where the relief in that proceeding operates as against the entire world and not just the parties before the court, it is not an action *inter partes*); Sutton v. English, 246 U.S. 199, 207ï08 (1918) (holding that where a suit to challenge a will must be brought in the court in which it was probated, and where the state courts of general jurisdiction have no original jurisdiction over actions to annul a will, a suit to annul a will is merely supplemental to the probate of the will, and there is thus no federal court jurisdiction); *Waterman*, 215 U.S. at 44 (noting that there is no federal court jurisdiction when the proceedings are in rem and are thus purely probate in character).

430. *See Sutton*, 246 U.S. at 205ï06 (analyzing the statutory scheme for challenging a will in Texas); *Farrell*, 199 U.S. at 111ï14 (analyzing the statutory scheme for challenging a will in Washington).

probate proceeding and not an independent *inter partes* action.[431] Moreover, if the result of the judgment arising from a challenge to the validity of a will were binding as against the whole world and not merely the parties to the suit, it would be a suit in rem rather than a suit *inter partes* and the federal court would lack jurisdiction over the suit. Even assuming the historical limitation on the scope of the statutory grant of subject matter jurisdiction does not bar adjudication of an independent action to challenge the validity of a will in federal court, the *custodia legis* doctrine might, depending on the stateôs statutory scheme. But since the *custodia legis* doctrine is basically a rule of first-come, first-served, the federal court would not be barred from exercising jurisdiction over an action challenging the validity of a willð even if such an action is deemed to be part of the ongoing probate proceedingsð if the federal action is filed prior to the commencement of any state probate proceedings.

D. STEP 4: CASE OR CONTROVERSY

Some courts have questioned whether probate matters are justiciable ñcases or controversiesò within the meaning of Article III.[432] In *Gaines v. Fuentes*,[433] however, the Supreme Court distinguished an action to probate a will from an action challenging a will. The Court reasoned that the mere probate of a will is an action in rem, which does not necessarily, and in fact seldom does, involve any case or controversy between parties within the meaning of Article III.[434] But once a dispute arises concerning the validity or construction of a will, an Article III controversy arises.[435] Accordingly, once a will has been probated, an action by a legatee, heir or other claimant against an executor is a case or controversy within the meaning of Article III,[436] as is a suit seeking a declaration as to heirship or the construction or validity of a will.[437]

---

431. *See Sutton*, 246 U.S. at 207ï 08; *Farrell*, 199 U.S. at 114ï 16.

432. *E.g.*, Allen v. Markham, 147 F.2d 136 (9th Cir. 1945), *rev'd*, 326 U.S. 490 (1946); Galleher v. Grant, 160 F. Supp. 88, 94 (N.D. Ill. 1958); Rice v. Rice Found., 610 F.2d 471, 475 & n.6 (7th Cir. 1979).

433. 92 U.S. 10 (1875).

434. *Id.* at 21ï 22.

435. *Id.* at 22.

> [J]urisdiction as to wills, and their probate as such, is neither included in nor excepted out of the grant of judicial power to the courts of the United States. So far as it is *ex parte* and merely administrative, it is not conferred, and it cannot be exercised by them at all until, in a case at law or in equity, its exercise becomes necessary to settle a controversy of which a court of the United States may take cognizance by reason of the citizenship of the parties.

Ellis v. Davis, 109 U.S. 485, 496ï 97 (1883).

436. Akin v. Louisiana Natð Bank, 322 F.2d 749, 751 (5th Cir. 1963).

437. Jackson v. U.S. Natð Bank, 153 F. Supp. 104, 108 (D. Or. 1957).

Thus, although the historical limitation on federal court subject matter jurisdiction is not constitutionally mandated and can easily be overruled by Congress, at least a small part of the exception has constitutional underpinnings. Yet in most probate exception cases, an Article III controversy will have arisen. The inquiry into whether a case or controversy exists, however, must be separated from the question of whether the controversy is a ñcivil actionò within the meaning of the statutory grants of subject matter jurisdiction to the federal courts,[438] which is subject to the historical gloss discussed above.

E. STEP 5: ABSTENTION

Finally, assuming a suit involving a probate-related matter survives the four steps discussed above, the court must consider whether it should nonetheless abstain in accordance with the parameters of the prudential abstention doctrines discussed in Part V.

VII. CONCLUSION

In the fourteenth century King Edward III of England stripped the ecclesiastical courts of the power directly to administer estates because the church clergy were converting the deceasedsô estates for their own use.[439] Although the modern-day, U.S. equivalent of the ecclesiastical courtsð the probate courtsð are not controlled by churches, ironically enough, the scenario discussed in the introduction illustrates how our present system of relegating probate and probate-related matters to state probate courts can permit religious groups to pillage the assets of the deceased in a manner reminiscent of pre-fourteenth century ecclesiastical practice.

The validity of the historical gloss on the statutory grant of subject matter jurisdiction to the federal courts is dubious, and when coupled with the expansive use of prudential abstention, seems little more than an effort by the federal courts to dump unwanted cases from their docket. With respect to diversity, the result is to relegate out-of-state litigants to a type of state court in which the risk of prejudice against out-of-state litigants presents the paradigmatic example of a suit that ought to be heard in federal court. When courts apply the probate exception to probate-related suits filed under RICO and other federal statutes, litigants are denied important federal rights.

438. *See id.*

439. *See* HOLDSWORTH, *supra* note 129, at 627.

If the federal courts will not reconsider the historical gloss on the diversity statute, they should actually follow eighteenth-century English practice, which as demonstrated in this Article allowed the courts of equity and common law to exercise jurisdiction over a great deal of probate-related matters, including any suit related to trusts, wills of land, and even some challenges to the validity of wills. Additionally, where an action falls within the historic scope of law or equity jurisdiction, the federal courts should limit their use of prudential abstention to the existing categories of abstention rather than creating new, result-oriented ones.

Finally, this Article illustrates that if the courts will not reverse course, Congress has the authority under Article III to do so, and concludes that fidelity to the principles underlying the establishment of a federal judiciary necessitate such a change.

DV

PROBATE COURT 4

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Harris County

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NO. 412,249

ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

APPLICATION FOR AUTHORITY TO RETAIN COUNSEL - MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Gregory A. Lester, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, ("Applicant"), and files this his Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP, and in support of such Application, would respectfully show unto the Court the following:

1.

Applicant was appointed Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, by Order of this Court signed on July 23, 2015. A true and correct copy of the Order Appointing Temporary Administrator Pending Contest is attached hereto as **Exhibit "A."** Applicant qualified by taking the Oath on July 24, 2015 and filing a Bond on July 27, 2015.

2.

Applicant requests permission to retain the services of JILL W. YOUNG, an attorney with the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP located in Houston, Harris County, Texas, as well as other members of that firm that specialize in probate litigation. Counsel will represent Mr. Lester in the matters filed herein, which involve the Temporary Administrator Pending Contest and those items enumerated in the Court's Order.

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3.

Applicant wishes to formally retain Counsel on behalf of the Estate. Applicant alleges and believes retaining Counsel for the purpose of representation in the aforementioned Estate is in the best interest of the Estate.

4.

Additionally, Applicant requests the services of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP to assist Applicant with his fiduciary responsibilities pursuant to the Texas Estates Code and this Court's Order. Applicant believes that it would be in the best interest of the Estate to retain counsel to assist him with such fiduciary responsibilities in the Estate on file herein.

WHEREFORE, PREMISES CONSIDERED, Applicant GREGORY A. LESTER, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, requests that this Court allow him to retain the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP to represent him in his capacity as Temporary Administrator Pending Contest of the Estate of the Decedent, and for such other and further relief which the Court may deem proper.

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Respectfully submitted,

GREGORY A. LESTER, TEMPORARY ADMINISTRATOR OF THE ESTATE OF NELVA E. BRUNSTING, DECEASED

MacINTYRE, McCULLOCH, STANFIELD & YOUNG, LLP

By:

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ATTORNEYS FOR APPLICANT

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent by e-mail, e-serve, facsimile, and/or United States certified mail, return receipt requested, on this the 15th day of September, 2015, to the following parties:

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No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY ADMINISTRATOR PENDING CONTEST PURSUANT TO TEXAS ESTATES CODE 452.051

On March 23, 2015, the Court heard and approved Carl Henry Brunsting's Application to Resign as Independent Executor. On July 21, 2015 the Court heard and considered CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE; Anita Kay Brunsting's OBJECTION TO CANDACE CURTS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE; AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR, RESPONSE TO CARL BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS'S APPLICATION FOR APPOINTMENT AS SUCCESSOSR EXECUTOR; Carl Brunsting's OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR; and Candace Curtis' RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTINGS APPLICATION FOR APPOINTMENT.

The Court finds that the Court has jurisdiction and venue over Decedent's Estate; that it is in the best interest of the Estate that a personal representative be immediately appointed; and that the parties have reached an agreement regarding the appointment of a Temporary Administrator Pending Contest with limited powers, which was announced on the record at said hearing, the terms of which are substantially as follows:

1. GREG LESTER would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed Temporary Administrator

EXHIBIT "A"

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Pending Contest of this Estate with limited powers to evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC, 2) Anita Kay Brunsting f/k/a Anita Kay Riley, Individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Anita Kay Brunsting Personal Asset Trust; and 3) Amy Ruth Brunsting f/k/a Amy Ruth Tschirhart, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedcent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Tschirhart Personal Asset Trust; and 4) Carole Ann Brunsting, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust. Greg Lester, Temporary Administrator Pending Contest will report to the Court regarding the merits of these claims on or before the expiration of this Order. This Order shall expire 180 days after the date that it is signed.

2. Amy Brunsting and Anita Brunsting, as the Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust agree to advance funds to the Estate of Nelva E. Brunsting (the "Estate") to pay all court approved fees and expenses of the Temporary Administrator Pending Contest.

3. The Temporary Administrator Pending Contest has the authority to seek a continuance in the "District Court Case" in which the Estate is a plaintiff, of the hearing on the Motion for Summary Judgment current scheduled for July 31, 2015 and to seek continuance of the October, 2015 trial setting in that matter.

4. Amy Brunsting and Candace Louise Curtis each agree to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each Estate, during the pendency of the Temporary Administration of this Estate.

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IT IS THEREFORE ORDED that Greg Lester is hereby appointed Temporary Administrator Pending Contest of this Estate and shall give a cash Bond in the amount of $100.00 (On Hundred Dollars), conditioned as required by law; that the Temporary Administration shall continue until the expiration of 180 days after the date of this Order, or as may be further ordered by this court; that the Clerk of this Court shall issue Letters of Temporary Administration when the Temporary Administrator has qualified according to law; and that the Temporary Administrator shall have the powers enumerated by the agreement of the parties as restated above.

Signed July 23, 2015.

Christine Butts, Judge
Harris County Probate Court No. 4

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HARRIS COUNTY, TEXAS

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NO. 412,249

ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER GRANTING AUTHORITY TO RETAIN COUNSEL – MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP

BE IT REMEMBERED that on this day came on for consideration the Application of Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, in connection with the Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP, and the Court finding that due and proper notice of the Application has been given, finds that the Application should in all respects be granted, it is accordingly,

ORDERED, ADJUDGED and DECREED by the Court that Gregory A. Lester, Temporary Administrator of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain JILL W. YOUNG with the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP as Counsel for Applicant, to perform such legal services on behalf of the Estate as are necessary and reasonable, including assisting Applicant in carrying out his fiduciary responsibilities.

IT IS FURTHER ORDERED by the Court that GREGORY A. LESTER, Administrator of the of the Estate of Nelva E. Brunsting, Deceased, be and is hereby granted authority to retain the law firm of MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP pursuant to the Texas Estates Code and this Court's Order.

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

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APPROVED AS TO FORM:

MACINTYRE MCCULLOCH STANFIELD
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By:_____

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ATTORNEYS FOR APPLICANT

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

CANDACE LOUISE CURTIS AND RICK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	**CIVIL ACTION NO. 4:16-CV-01969**
	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN A. MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER, JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTTS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA 'BRUNSTING, AND AMY BRUNSTING,	§	
	§	
Defendants.	§	

DEFENDANTS CANDACE KUNZ-FREED AND ALBERT VACEK JR.'S ADOPTION AND JOINDER IN JILL WILLARD YOUNG'S MOTION TO STRIKE PLAINTIFFS' "ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT"

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendants Candace Kuntz-Freed and Albert Vacek, Jr. (collectively referred to as "V&F") hereby file this Adoption and Joinder in Jill Willard Young's Motion to Strike Plaintiffs' "Addendum of Memorandum in Support of RICO Complaint and would respectfully show the Court the following:

I.
THE COURT SHOULD STRIKE PLAINTIFFS' ADDENDUM

1. In the interest of justice and judicial economy, and pursuant to Federal Rule of Civil Procedure 10(c), V&F hereby adopts and incorporates by reference, as if recited herein the

arguments and authority contained in Jill Willard Young's Motion to Strike (Dkt. 38). This Court should strike Plaintiffs' Addendum, because it is not a valid pleading under the Federal Rules of Civil Procedure.

2. More importantly, the Court should dismiss Plaintiffs' claims against V&F. The "Addendum" does not change the merits of V&F's Motions to Dismiss. The "Addendum" sparsely references V&F. *See* Addendum, at ¶¶ 21, 23, 26, 29, 38, and 61. Of those references, none form the basis for a valid complaint or support a RICO claim against V&F.

3. Plaintiffs' claims should be dismissed because they have not adequately pleaded a violation of the RICO Act. Even assuming that Plaintiffs' Addendum is considered to be a supplement to Plaintiffs' Complaint, it does not change the fact that Plaintiffs have failed to meet the required pleading standards.

II.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants Candace Kuntz-Freed and Albert Vacek, Jr. hereby request that the Court strike Plaintiffs' Addendum.

Respectfully Submitted,

By:/s/ *Cory S. Reed*

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CERTIFICATE OF SERVICE

I certify that on the 4th day of October, 2016, a true and correct copy of the foregoing was served was served via the Court's ECF system upon the following counsel of record:

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/s/ Cory S. Reed
Cory S. Reed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff,	§	
	§	Civil Action No. 4:12-cv-00592
v	§	
	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al	§	
Defendants	§	

Opposed Motion

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

Rule 42(a) Courtesy Copy

PLAINTIFF'S MOTION FOR CONSOLIDATION OF RELATED CASES PURSUANT TO 28 U.S.C. §1367, RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULE 7.6 WITH SUPPORTING MEMORANDUM

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17-20360.2494

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1. Above named Plaintiff respectfully moves this Court to order consolidation of the following cases pursuant to 28 U.S.C. §1367, Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6:

a. Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592 (TXSD Filed 2/27/2012) currently pending before the Honorable Kenneth Hoyt, and

b. Civil Action No. 4:16-cv-01969 currently pending before the Honorable Alfred H. Bennett (TXSD filed 7/5/2016)

2. Plaintiff moves for consolidation of pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal. The two cases are appropriate for consolidation for the following reasons:

3. The two cases share common parties. Candace Curtis is a Plaintiff in both federal suits and Amy and Anita Brunsting are Defendants in both suits.

4. The later suit is the cumulative product of events occurring in the course of litigating the earlier matter and although the remedies requested and the jurisdictions upon which the authorities of the Court have been invoked are divergent, all the facts flow from common acts and events.

5. The two cases involve common questions of law and fact because both arise from the same factual situation; namely, the rupture and looting of the Brunsting family of trusts and injuries resulting from the Defendants' efforts to evade accountability; and thus the two cases also involve common questions of law.

6. Through a series of awkward circumstances, the earlier diversity matter was remanded to Harris County Probate Court No. 4. The probate court experience produced evidence of a sinister design, resulting in the necessity for Plaintiff to again seek remedy in this Court and, thus, Plaintiff filed a separate action into the Southern District of Texas, Case No. 4:16-cv-01969, in

concert with Federal Rule of Civil Procedure Rule 11(b) motion for sanctions and with Federal Rule of Civil Procedure 60(b) and (d) motion for vacatur in the above titled Court.

7. While the earlier suit was a simple breach of fiduciary seeking disclosures and accounting, the later filed case is a Racketeer Influenced Corrupt Organization (RICO) suit brought under federal question jurisdiction, implicating the Probate Court's officers' participation in the conduct of an enterprise through a pattern of racketeering activity.

8. Judicial convenience and economy will be enhanced by consolidation of the actions.

9. Consolidation will result in one trial under one judge, which will bind all plaintiffs and defendants for all purposes. This will save time and avoid unnecessary costs to the Defendants, to the Plaintiffs in both actions, and to the witnesses who would otherwise be required to testify in two cases.

10. Consolidation will not delay final disposition of any matter.

11. Consolidation of these two cases will promote the uniformity of decision and eliminate any potential for conflicting rulings, provide for judicial economy and the convenience of witnesses and parties, and will promote the expeditious disposal of all matters.

HISTORY AND NATURE OF THE PROCEEDINGS

12. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl, Carole, Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al, per stirpes.

13. Plaintiff Candace Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.[1]

14. Plaintiff Curtis complaint was dismissed under the probate exception to federal diversity jurisdiction and Curtis appealed. The Fifth Circuit reversed and Ordered remand on January 9, 2013.

15. On January 29, 2013, attorney Bobbie Bayless filed suit against Nelva Brunsting's trust attorneys, Candace Kunz-Freed, Albert Vacek Jr. and Vacek & Freed P.L.L.C., in the Harris County District Court on behalf of Carl Brunsting as executor of the estate of Nelva Brunsting[2] raising claims only related to the Brunsting trusts then in the custody of a federal court.

16. On April 9, 2013, this Honorable Court issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's prior approval.

17. Also on April 9, 2013, Bobbie Bayless filed suit in Harris County Probate Court No. 4, on behalf of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) naming federal Plaintiff Curtis a "Nominal Defendant" in both suits.

18. Not only did Bayless advance claims exclusively related to the trusts already in the custody of the federal Court, she claimed the breaches of fiduciary against the beneficiaries of the Brunsting trusts were claims belonging to the estate of Nelva Brunsting. That theory was disposed of in the Fifth Circuit in *Curtis v Brunsting 710 F.3d 406*. The "Trust(s)" is the only heir in fact to the estate and assets in the trusts are not property of the estate of Nelva Brunsting.

[1] No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; USDC for the Southern District of Texas, Houston Division

[2] No. 2013-05455; Carl Henry Brunsting as Executor of the Estate of Nelva Brunsting v. Candace Freed and Vacek & Freed P.L.L.C.; 164TH Judicial District Court of Harris County, Texas.

19. At paragraph 1, page 2 of Curtis v Brunsting 710 F.3d 406:

> *In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust. Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.*

20. Under the wills Carl Brunsting has no standing to bring claims against trustees as heir or executor of an estate. He only has standing to bring claims individually as a trustee or beneficiary of the trust and that trust was in the custody of the federal court.

21. In Curtis v Brunsting the Fifth Circuit explained the doctrine of comity by citing to the Supreme Court's clarification of the "distinctly limited scope" of the probate exception,[3] explaining:

> *[W]e comprehend the 'interference' language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.*[4]

22. In or about November of 2013, Pro se Plaintiff Curtis retained the services of Houston Attorney Jason Ostrom. On May 15, 2014, Attorney Jason Ostrom caused this Honorable Court to issue an Order for Remand of Curtis v Brunsting to the custody of Harris County Probate Court No. 4 (412,249-402) for consolidation with the claims of Carl Brunsting (412,249-401).

[3] Marshall v Marshall 546 U.S. 293, 310
[4] Marshall v Marshall 546 U.S. 293, 311–12

23. On July 5, 2016, Plaintiff Curtis, along with her domestic partner Rik Munson, both individually and as private attorneys general on behalf of the public trust, filed a RICO suit into the United States District Court for the Southern District of Texas, Houston Division (No. 4:16-cv-01969), accusing the Harris County Probate Court and its officers of public corruption conspiracies involving schemes and artifices to deprive Plaintiff Curtis, the People of Texas, and others, of the honest services of an elected public official.

24. The record will show the Probate Court has refused to resolve any substantive matter on the merits and the reason is clearly that no court can assume in rem jurisdiction over a res in the custody of another court. Thus, the probate court never had jurisdiction over the Brunsting trust, which renders the Order for remand to the state probate court void ab initio.

25. Rather than dismiss and return Curtis v Brunsting to the federal court, the RICO Defendants chose a less honorable course, forcing Plaintiff Curtis to respond accordingly.

26. On August 3, 2016, Plaintiff Curtis filed a F.R.C.P. Rule 11(b) motion for sanctions and F.R.C.P. Rule 60(b) and (d) motions for vacatur of the remand to state court, on the ground that the remand was obtained by fraud upon Plaintiff Curtis and upon the Court, thus vitiating the application to amend the original petition that facilitated the remand in the first instance.

27. Plaintiffs respectfully request this Honorable Court take Judicial Notice of the complaint, motions to dismiss and Plaintiffs' replies in the closely related proceedings pursuant to Federal Rules of evidence §201.[5]

STAGE OF THE PROCEEDINGS

28. The RICO suit is in the opening phase and the initial conference is set for October 28, 2016 at 9:00 a.m. before the Honorable Alfred Bennett.

[5] Case 4:16-cv-01969 TXSD Motions to dismiss Dkt 19, 20, 23, 25 and replies Dkt 33, 34, and 41

29. The earlier breach of fiduciary matter, Candace Curtis v. Anita and Amy Brunsting 4:12-cv-00592, is ripe for F.R.C.P. Rule 12(c) relief on the unresolved summary and declaratory judgment pleadings. Those motions have not been answered and the probate court refused to set the motions for hearing. A proper determination on the merits of those unresolved motions will be necessary to support the racketeering conspiracy and predicate act claims arising under the later filed RICO suit.

30. Plaintiff hereby incorporates by reference the Rule 11[6] and 60[7] motions referred to in item 18 supra, and the federal civil RICO complaint referred to in item 17 supra, as if fully restated herein, and further asks this Honorable Court to take Judicial notice of the relevant public records.

MEMORANDUM IN SUPPORT OF RULE 42(A) MOTION

31. Above named Plaintiff has moved this Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the following cases: Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, No. 4:12-CV-00592 (TXSD Filed 2/27/2012) and Curtis, et al. v Kunz-Freed, et al, No. 4:16-cv-01969 (TXSD Filed 07/05/16).

32. Plaintiffs' motion requests consolidation for the limited purposes of pre-trial proceedings and trial only, it does not request consolidation for the purposes of judgment or rights to appeal.

33. Rule 42(a) of the Federal Rules of Civil procedure provides:

> *Rule 42. Consolidation; separate trials.*
>
> *(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it*

[6] Case 4:12-cv-00592 Document 120 Filed in TXSD on 08/05/16
[7] Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16

may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

34. The purpose of Rule 42(a) "is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Wright & A. Miller, Federal Practice and Procedure, § 2381 (1971).*

35. Local Rule 7.6 and Federal Rule of Civil Procedure 42(a) requires the motion be filed in the earlier Court and the above Court is the earlier Court. However, Federal Rule of Civil Procedure 42(b) prevents consolidation, when doing so would pollute diversity and deprive the Court of jurisdiction.

36. The earlier matter was filed under diversity with the allegation that Defendants were acting in secret and were uniquely in exclusive possession of all of the information relating to the case.

37. Plaintiff Curtis submitted a First Amended Complaint in the above Court on April 29, 2013, seeking to amend the claim to federal question jurisdiction based upon newly discovered evidence involving fraudulent securities transfers. That amendment was properly rejected by the Court due to Plaintiff's failure to provide a certificate of conference as required by local rule.

BOTH ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT

38. Rule 42(a) permits a district court to consolidate separate actions when they involve "a common question of law or fact." Fed.R.Civ.P. 42(a).

39. Even if there are some questions that are not common, consolidation is not precluded. *Batazzi v. Petroleum Helicopters, Inc., 664 F.2d 49, 50 (5th Cir. 1981); See Central Motor Co. v. United States, 583 F.2d 470 (10th Cir. 1978).*

40. Common questions of law and fact abound in these cases, as both stem from the same (long con) conspiracy and the later controversy is based upon evidence evolving out of Defendants' continued attempts to foreclose remedy in the trust suit case, aided and abetted by the state court and its officers.

41. It was the process of seeking remedy and Defendants' continued efforts to obstruct justice and evade accountability, that has produced a clear picture of a larger mosaic involving a pattern of racketeering activity targeting familial wealth.

42. Although the lawsuits were filed at separate times and in separate forums, and although multiple actions were improperly brought in state courts, all of it is, in fact, only one continuous event and therefore, it necessarily follows that the matter is particularly appropriate for consolidation.

A COURT HAS BROAD DISCRETION IN ORDERING CONSOLIDATION

43. A court has broad discretion in determining whether consolidation is practical. *Atlantic States Legal Foundation Inc. v. Koch Refining Co., 681 F. Supp 609, 615 (D. Minn. 1988).* In exercising this discretion, a court should weigh the time and effort consolidation would save, with any inconvenience or delay it would cause. *Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985); Huene v. United States, 743 F.2d 703, 704 (9th Cir. 1984). See also Kramer v. Boeing Co., 134 F.R.D. 256 (D. Minn. 1991).*

44. Consolidation offers efficiency and convenience in this case. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendants, the plaintiffs, this Court, and the witnesses who would otherwise be required to testify in both cases.

45. Consolidation will not delay the disposition of this case. In fact, it will minimize delays. The cases are at different stages of the discovery process, but this does not bar consolidation. (*United States v. City of Chicago, 385 F. Supp. 540, 543 (N.D. Ill. 1974*).

46. The earlier case was filed under diversity, but evidence discovered in the course of pursuing remedy has produced racketeer influenced corrupt organization claims under federal question jurisdiction and the record will show No. 4:12-cv-00592 has been brought back to the federal court in direct response to the probate court's unwillingness to ensure Plaintiff's right to be heard and blatant refusal to resolve any matter on the merits.

47. Consolidation is necessary to the ends of justice and for complete resolution of all matters for all parties and, whereas, the rules will not allow all of the related cases and necessary parties to be consolidated under diversity jurisdiction, all of the related cases and necessary parties can and should be consolidated under federal question jurisdiction pursuant to 28 U.S.C. §1367.

48. Thus, whether the economy and efficiency of the Court will best be served by transferring the federal question suit to this Honorable Court or by transferring the diversity case to Judge Bennett's Honorable Court, Plaintiffs' do not presume to suggest, but do believe that justice can only be served by consolidation of all related matters under one roof for all purposes.

CONCLUSION

49. Jurisdiction of the probate court at the point in time when its jurisdiction was invoked, is a proper subject of inquiry under Rule 60. "Courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte." *U.S. v. White, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998).*

50. The remand Order is void ab initio for want of jurisdiction in the state court. Want of, and acts excess of, subject matter jurisdiction can never be cured after the fact. Furthermore,

Plaintiff Curtis was named a nominal defendant in the estates probate suit and simply cannot be consolidated with a plaintiff that has named her a defendant in the same lawsuit.

STANDARD OF REVIEW

51. Rule 60(b) motions are reviewed for abuse of discretion. *American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co., 198 F.3d 1332, 1338 (11th Cir. 1999); Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000).*

52. However, motions under Rule 60(b)(4), on the ground that a judgment is void are reviewed de novo. *Burke v. Smith, 252 F.3d 1260,1263 (11th Cir. 2001).*

WHEREFORE, Petitioner respectfully requests the motion for consolidation be granted.

Respectfully submitted,

October 5, 2016

Candace L. Curtis

CERTIFICATE OF CONFERENCE

I certify that I have communicated with Defendants and they are opposed to the relief requested herein.

Candace L. Curtis

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 5th day of October, 2016, on the following via email and deposit in USPS Priority Mail:

Neal E. Spielman
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Attorney for Amy Brunsting

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Attorney for Anita Brunsting

I hereby certify that a true and correct courtesy copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on all parties this 5th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

Candace L. Curtis

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff	§	
	§	Civil Action No. 4:12-cv-00592
v	§	
	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al	§	
Defendants	§	

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

ORDER FOR CONSOLIDATION

Upon consideration, the Motion for Transfer and Consolidation for pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal (Doc. No.___), filed by Plaintiff in Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592, is hereby Granted.

The following actions are hereby consolidated for pre-trial proceedings and trial only: Civil Action No. 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, (Filed TXSD 2/27/2012) and Civil Action No. 4:16-cv-01969 Curtis et al., v Kunz-Freed et al (Filed TXSD 7/05/2016).

All depositions, interrogatory responses, materials produced in response to requests for production, and responses to requests for admissions in any of these actions may be used in any

other action consolidated by this Order. All notices, requests, responses, motions and other filings relating to pretrial proceedings must be served on all counsel in each of these actions and bear the case caption for each action that has been consolidated pursuant to this order.

SO ORDERED

Date: _____, 2016

_____
The Honorable Kenneth Hoyt
United Stated District Judge

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT NEAL SPIELMAN'S RULE 7.1 CERTIFICATE OF INTERESTED PARTIES

Pursuant to Fed.R.Civ.R. 7.1, Defendant Neal Spielman ("Defendant") files this Certificate of Interested Parties. To the best of Defendant's knowledge, there are no other interested parties who may be financially interested in the outcome of this litigation, other than the named parties to the suit.

In accordance with this Court's Order, if new parties are added, or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, counsel will promptly file an amended certificate with the clerk.

Respectfully submitted,

By: /s/ Martin S. Schexnayder__
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Federal Bar No. 15146

ATTORNEY FOR DEFENDANT NEAL SPIELMAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to all attorneys of record in accordance with the Federal Rules, on this 6th day of October, 2016.

/s/ Martin S. Schexnayder
Martin S. Schexnayder

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' ANSWER TO DEFENDANTS ANITA AND AMY BRUNSTING'S MOTIONS TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6)

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1. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint, in response to Defendant claims of a want of specific factual allegations and other affirmative defenses.

3. On September 16, 2016, Defendant Anita Brunsting filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) (Dkt 30).

4. On September 21, 2016, Defendant Amy Brunsting filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss (Dkt 35).

I. STANDARD OF REVIEW

Federal Rule 12(b)(6)

5. When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must take the facts alleged in the complaint as true and construe them in the light most favorable to the plaintiff. *Resnick v. AvMed, Inc., 693 F.3d 1317, 1321–22 (11th Cir. 2012).* To survive Rule 12(b)(6) scrutiny, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal, 556 U.S.*

662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "[F]acial plausibility" exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556).

6. The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is de novo, and the Court will employ the same standard as the district court. *First Am. Title Co. v. Devaugh, 480 F.3d 438, 443 (6th Cir. 2007); Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club, 419 F.3d 462, 468 (6th Cir. 2005).*

II. ISSUES PRESENTED

7. Both Amy and Anita Brunsting's motions are brought pursuant to Rule 12(b)(6) and claim Plaintiffs have failed to provide sufficient factual allegations to place them on notice of the claims against them, a due process argument.

8. Defendants claim ignorance of facts, while at the same time presenting an opposing view of the facts.

9. Defendants also misstate Plaintiffs' aiding and abetting claims and then deny their misstatements, and appear not to understand the allegations themselves.

III. HISTORY OF THE CONTROVERSY

10. Plaintiffs hereby incorporate by reference the "Standards of Review", "Contextual Summary", "History of the Controversy", and "History of the Litigation" (Dkt 33 sections I, II, III and IV) from Plaintiffs' response to the Motions to Dismiss filed by Defendants Vacek & Freed, (Dkts 19 & 20) as if fully restated herein.

IV. THE ARGUMENT

11. In a Rule 12(b)(6) motion to dismiss Defendants do not have the pleasure of arguing the facts and the only issue after the finder of fact applies the law, is whether or not Plaintiffs have sufficiently pled their claims. If Plaintiffs have not fully pled their claims, the question becomes whether the complaint could be amended to satisfy the heightened pleading standards demanded by Federal Rule of Civil Procedure Rule 9(b).

12. While offering knowledge of opposing facts, Defendants ask the Court to believe they lack sufficient notice of facts to defend the claims against them.

13. In this case Plaintiffs have responded to each previous motion to dismiss, by simply pointing to the public records of proceedings in the state and federal court, many of which are contained in the attachments to Plaintiffs' Addendum of Memorandum (Dkt 26).

14. These two Defendants' motions to dismiss share an uncanny similarity and other than an occasional detour, individualized for the particular movant, and a little transposition in the order of appearance of the words, each strike the same chords with nearly identical expressions. Plaintiffs will therefore respond to both pleadings in harmony.

Creative Pleading And Something Called A "QBT"

15. These two Motions (Dkt 30 and 35), and Mr. Mendel's subsequent Rule 12(b)(6) Motion, (Dkt 36) for the first time in any pleadings, in any related action, in any court, over a period of four and one-half years, each introduce in their alternate claim of facts, something they call a "Qualified Beneficiary Trust" (QBT) allegedly drafted by Defendant Albert Vacek, Jr.

16. These two Defendants and their carousel of lawyers have steadfastly clung to an instrument they proclaim to be "the trust", allegedly signed by Nelva Brunsting on August 25, 2010. Plaintiffs do not need to rehash these unresolved motions to respond to these assertions.

17. In answer to these "QBT" assertions, Plaintiffs incorporate by reference and respectfully request the Court take Judicial notice of, pursuant to Federal Rule of Evidence 201, 1) Defendant Anita and Amy Brunstings' No Evidence Motion for Partial Summary Judgment (Dkt 26-5), Plaintiff Curtis Answer and Demand to Produce Evidence (Dkt 26-11), The Report of Temporary Administrator Gregory Lester (Dkt 26-9), Plaintiff Curtis Motion for Partial Summary and Declaratory Judgment (Dkt 26-14), the (Request for setting A1 attached) the March 9, 2016 transcript (Dkt 26-16) and the Rule 60 Motion itself (Dkt 26)

V. FAILURE TO STATE A CLAIM

18. These Defendants state that they are litigants in estate related proceedings involving Plaintiff Curtis, profess ignorance of any wrongdoing, and claim they are not participants in any racketeering scheme.

19. In response to previous motions to dismiss for failure to state a claim, Plaintiffs have pointed only to the public record and particularly the motions and pleadings from the state court, and Defendants are clearly connected to those records, all of which have been served upon them through their respective agents.

20. Plaintiffs will continue to point to the public record in response to these two Motions.

21. A motion to dismiss is not a substitute for an answer and aside from claiming lack of knowledge and lack of notice, Defendants advance several affirmative claims of contrary facts. The substance of the motion is 1) want of sufficient information to satisfy notice requirements, 2) a general denial, and 3) an opposing view of the facts.

22. All of the facts necessary to meet Plaintiffs' burden are contained in the public record and are cited with specificity throughout Plaintiffs' original Complaint, Addendum, and Responses to Motions to Dismiss.

23. Plaintiffs' Addendum of Memorandum (Dkt 26) and Plaintiffs' prior Responses address the only relevant challenge under Rule 12(b)(6) and answers any questions of how each player fits into the enterprise operations puzzle. In response to Motions to Dismiss, Plaintiffs easily point to the record and how the individual exhibits concatenate to explain each participant's contribution to the overall mosaic.

24. The motives of the enterprise are greed and political aspirations, the means are described in the RICO complaint, and by refusing to honor any legal or moral obligations Anita and Amy Brunsting provide the opportunity for the rest of these Defendants to participate.

25. As alleged in the complaint, Anita Brunsting presents the other players with an exploitation opportunity. Anita Brunsting planned to hijack the family trust res, by improperly seizing control of the office of trustee.

26. Defendants exercised the powers of the office and refused to honor any of the duties of the office, which is how they became defendants in the first place.

27. To Plaintiffs' knowledge neither Amy nor Anita Brunsting has ever set foot inside the Harris County Probate Court #4 and apparently think hiring mercenaries to fight their battles removes them from the center of the controversy and the consequences of their attorney's acts as well. It does not.

28. The facts show Anita Brunsting violated the no contest clause in the 2005 Restatement, not when she misappropriated assets to her own benefit in violation of trust provisions, but when she advanced theories that those benefits were gifts, fees, and reimbursements thereby attempting to enlarge her share of the trust res.

29. In an exploitation game of lawyers playing the ends against the middle, as in the case at bar, this fact alone is significant.

30. On April 9, 2013, Honorable United States District Judge Kenneth Hoyt issued an injunction, not only enjoining Anita and Amy Brunsting from spending trust money or liquidating trust assets without the Court's prior approval, but also commanding specific performance. Defendants Anita and Amy are commanded by that injunction, to deposit income into an appropriate account for the beneficiary. To date, they have refused or otherwise failed to do so and continue to hold Plaintiff Curtis' property and that of siblings Carl and Carole Brunsting, without offering a single legal defense. (Dkt 26-11)

31. The absolute refusal of these two Defendants to honor any legal or moral obligations has opened the door of opportunity for the other Defendants to play their shakedown game against Plaintiff victim Candace Curtis and her victim siblings, Carl and Carole Brunsting.

Probate of the Estate of Nelva Brunsting

32. Defendants claim the matter before the Court is related to probate of the Estate of Nelva Brunsting.

33. The Fifth Circuit Court of Appeals in *Curtis v Brunsting 704 F.3d 406* properly held that assets in an inter an vivos trust are not property of a decedent's estate and that the suit filed in TXSD by Plaintiff Candace Louise Curtis February 27, 2012, No. 4:12-cv-0592, was related only to an inter vivos trust and not to an estate. The Circuit Court also noted that the wills of both Grantors bequeathed everything to "the trust" Curtis v Brunsting 704 F.3d 406, 409-410.

34. Because the only heir in fact to the Estate of Nelva Brunsting (Dkt 41-2, 41-3) is "the trust", Carl Brunsting had no standing to bring suit individually in the probate court as an heir to the Estate, as he is only a beneficiary of the heir in fact ("trust").

35. Trespass against the trust during the life of Nelva Brunsting created claims belonging to the cestui que. If Candace Freed's only liability for betraying Privity and the fiduciary duties she

owed Nelva Brunsting are to the estate, those claims belong to the injured cestui que (beneficiaries) of the heir in fact trust and are the duty of the trustees to pursue.

36. In any event, the trust res was in the in rem custody of a federal court when all of the trust related claims were filed in state courts under the disguise of the Estate of Nelva Brunsting, and those state court suits were filed after the Fifth Circuit Opinion in this case was published.

Wiretap Recordings

37. Defendants assertions of alternate facts are irrelevant under Rule 12(b)(6), but are none-the-less interesting when compared against the public record and, thus, worthy of note.

38. The RICO complaint states that Anita Brunsting's counsel of record, Bradley Featherston, disseminated private third party telephone communication recordings on or about July 1, 2015 via certified U.S. Mail signed receipt required.(see Dkt 26-8, Carl's application for Protective Order); (Dkt 26-12, Transcript of the hearing on Carl's application for Protective Order); (Attached Exhibit A2, Defendants Joint opposition to the application for protective order); and (Plaintiff Curtis wiretap brief attached as Exhibit A3 with sub-exhibits A-G).

39. These Defendants also misstate the allegations in the complaint, (Dkt 1) which alleges that Anita Brunsting's counsel, Bradley Featherston, "disseminated" wiretap recordings by certified mail more than three and one-half years after Carl Brunsting's petition to take depositions before suit was filed, and a demand for such disclosures was first made. Defendants none-the-less attempt to conceal the disruptive purpose for the dissemination, as occurring in the ordinary course of discovery. Plaintiff Curtis' wiretap brief gives the lie to these claims (A3).[1]

False Affidavit

40. Amy Brunsting claims she did not file a false affidavit in the federal court.

[1] RICO Claim numbers 14 through 20 in the complaint specifically refer to the wiretap recordings.

41. Amy's affidavit, ascribed and sworn to before one authorized to accept an oath, was filed March 6, 2012 in the Southern District of Texas Case 4:12-cv-0592, attached to a motion for emergency order[2] to remove a lis pendens filed among the papers in the federal petition. The emergency motion resulted in sua sponte dismissal March 8, 2012 (TXSD 4:12-cv-0592 Dkt 11).

42. Plaintiffs respectfully request this Honorable Court take judicial notice, pursuant to Federal Rule of Evidence 201, of Dkt 120 in TXSD case 4:12-cv-0592, which is a Rule 11 Motion for Sanctions, filed August 5, 2015, against Defendants Anita and Amy Brunsting and their counsel, for continued violation of the federal injunction issued April 9, 2013. (Dkt 26-2)

43. The Honorable Kenneth Hoyt commented at the injunction hearing that all that was necessary to resolve the controversy was to distribute the assets, and the injunction Judge Hoyt issued commands immediate specific performance regarding the deposit of "income".

44. Defendants Anita and Amy Brunsting, aided and abetted by their attorneys, continue to thumb their noses at the dignity and authority of a federal Court, while simultaneously seeking a priori relief from related claims before this Court.

45. RICO Complaint Claim 37 directly addresses Amy Brunsting's false affidavit (Dkt 26-18) regarding establishment of the personal asset trusts, and no more need be stated on that topic here.

46. Participation in a racketeering conspiracy can be both active and passive and both the active and passive participation of these two Defendants has been central. If one removes Anita Brunsting from the equation, none of this could have happened. Amy Brunsting's active and passive participation is equally incriminatory.

[2] Docket entries 10 and 10-1, Case 4:12-cv-0592 filed TXSD 2/27/2012

VI. CONCLUSION

47. All of the evidence necessary to establish Plaintiffs' case is contained in the public record. Defendants profess to have been party to those proceedings, have professed personal knowledge of a contrary set of facts and cannot possibly claim want of notice of the facts contained in the records and pleadings in those events.

48. These Defendants are more than apprised of the specific conduct amounting to their participation in the racketeering conspiracy, whether ignorant of the law or unaware of the acts of their agents.

49. Defendants Anita and Amy Brunsting, facilitated by the excellent assistance of Defendant Candace Freed, and aided and abetted by the other Defendants, have shown nothing but wanton and willful disrespect for all legal and moral obligations. Without their absolute refusal to act, the original lawsuit would not have been filed, or, in the alternative, would have been resolved and the familial litigants would have gone on with their lives. Instead, the sibling beneficiaries are mired in a continuing lawyer orchestrated soap opera, all about manipulating the judicial process in order to bust the Brunsting trusts for their own personal financial gain.

50. Defendants' Rule 12(b)(6) Motions are just another attempt to avoid accountability. The motions to dismiss should both be denied for the reasons stated and these Defendants should be held to answer under the law.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Oder denying Anita and Amy Brunsting's Rule 12(b)(6) motions to dismiss.

Respectfully submitted October 6, 2016,

/s/Candace L. Curtis
Candace L. Curtis

/s/Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on October 6, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/Candace L. Curtis
Candace L. Curtis

/s/Rik W. Munson
Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendants Anita and Amy Brunsting, docket entries 30 and 35, should be Denied.

It is SO ORDERED

_____ _____

Date

The Honorable Alfred H Bennet
United Stated District Judge

Dear Judge Comstock

I am writing today to ask for a hearing date in effort to expeditiously dispose of this case. Concurrent with this request for setting, I am filing a motion to transfer the related District Court case to Probate #4.

Because summary and declaratory judgement motions filed in the Probate Court by both Plaintiff's and Defendant's raise questions involving the validity, efficacy and applicability of instruments drawn up by District Court Defendant Candace Freed it would necessarily follow that the risk of contradictory and inconsistent rulings on the same issues of law and fact and the burden of duplicate proceedings upon the courts would mandate the transfer of the related District Court suit to the Probate Court sua sponte.

Plaintiff Curtis Motion for the transfer of the district court case was filed on 2/09/2016 (PBT-2016-44972) and there are several dispositive matters pending before the Court for which plaintiff seeks setting:

1. Defendants No-Evidence Motion for Partial Summary Judgment (PBT-2015-227757)
2. Plaintiff Curtis Answer with Motion and Demand to Produce Evidence. (PBT-2015-227757)
3. Plaintiff Carl Brunsting's Motion for Partial Summary Judgment (PBT-2015-225037)
4. Plaintiff Curtis verified motion for partial summary judgment and petitions for declaratory judgment. (PBT-2016-26242)

WHERFORE Plaintiff Curtis respectfully requests the Court set a hearing on her motion for Partial Summary and Declaratory Judgments (PBT-2016-26242) and on her Motion and Demand to Produce Evidence (PBT-2015-227757) and upon any other pending dispositive motions the Court may deem appropriate to settle at the hearing.

Respectfully

ANM

PROBATE COURT 4

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County Clerk
Harris County

DATA-ENTRY
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Cause: 412249-401 Seq: 1 ID: 7902615

NO. 412,249-**401**

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, et al	§	

DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER

Defendants, Anita Brunsting, Amy Brunsting, and Carole Brunsting, file their response to the Motion for Protective Order filed by Drina Brunsting, as attorney-in-fact for Carl Brunsting, and would respectfully show the Court as follows:

I. Summary of the Argument

It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee. Thus, the evidence essentially destroys most of Drina's claims in this proceeding.

Drina's "motion for protective order" is not a protective order in any sense of the term. The relief Drina seeks can fairly be summarized as follows: sworn testimony regarding the recordings; turnover to Drina's counsel of all copies of the recordings; and a ruling the recordings cannot be used in this proceeding. Thus, Drina's motion is some convuluted discovery/injunctive/admissibility relief without any legal authority, be it a statute, rule, or case law, upon which this Court could reasonably rely to grant her relief.

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Finally, and most importantly, Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought. Accordingly, the Motion must be denied.

II. Argument & Authorities

A. Protective Orders

Protective Orders are described in Texas Rule of Civil Procedure 192.6, which provides:

> (a) Motion. A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought. A person should not move for protection when an objection to written discovery or an assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. If a person seeks protection regarding the time or place of discovery, the person must state a reasonable time and place for discovery with which the person will comply. A person must comply with a request to the extent protection is not sought unless it is unreasonable under the circumstances to do so before obtaining a ruling on the motion.
>
> (b) Order. To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights, the court may make any order in the interest of justice and may - among other things - order that:
>
> (1) the requested discovery not be sought in whole or in part;
> (2) the extent or subject matter of discovery be limited;
> (3) the discovery not be undertaken at the time or place specified;
> (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court;
> (5) the results of discovery be sealed or otherwise protected, subject to the provisions of Rule 76a.

In the case at hand, Drina propounded discovery to Anita, in which she complied by providing discovery responses. Drina now seeks a protective order against discovery she

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propounded against an opposing party. It is nonsense. There is nothing in the rules nor any other legal authority that allows a party to move for a protective order against that party's own discovery requests and the responses thereto.

With respect to the information Drina seeks regarding the recordings, Drina provides no reason why she would be unable to obtain such information through normal discovery channels such as interrogatories or deposition. Defendants were unable to find any reported cases where a Court compelled a party to create an affidavit at the opposing parties' request. Drina's motion appears to be another boondoggle Drina created to needlessly drive up litigation costs.

B. Alleged Illegal Wiretapping

The chief authority upon which Drina's motion is based is the Texas Civil Wire Tap Act, Tex. Civ. Prac. & Rem. Code, Title 123. In Texas, where one party consents, the Texas Civil Wire Tap Act is inapplicable. *Kotrla v. Kotrla*, 718 S.W.2d 853, 855 (Tex.App.–Corpus Christi 1986, writ ref'd n.r.e). With respect to the first recording between Carl and Nelva, there is no evidence that Nelva did not consent to the recording.

With respect to the remaining conversations between Carl and Drina, at the time of the recordings Carl and Drina intended to divorce. It seems perfectly logical that Carl consented to the recordings at that time.

Further, on information and belief, Carl was aware of all of the video recordings made. Additionally, on information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the call and/or which triggered in accordance with its own operation. Either way, one – if not both – participants had full knowledge that he/she was being recorded.

Now that Carl and Drina have apparently reconciled, Carl's counsel alleges neither

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consented to the recordings. There is no evidence to support the allegation. In short, Drina has not proven that both her and Carl did not consent to the recordings at the time they were made.

C. Drina's requests are merely an attempt to hide evidence that is damaging to her/Carl's claims.

One of the underlying tenets of Carl/Drina/Candace's claims is that certain actions undertaken by Nelva and/or by Anita, Amy or Carole were improperly taken. Unfounded and insupportable allegation of incompetence, undue influence, etc. abound. Yet now, we have Drina taking efforts to suppress exculpatory evidence. The evidence Drina seeks to hide constitutes evidence that adds context and color to decisions made and actions taken. It is evidence that will assist the fact-finder in confirming what Anita, Amy or Carole already know to be true. Specifically, that the actions undertaken by Nelva and/or by Anita, Amy or Carole were proper and justified in light of the circumstances as they were or appeared to be at the time.

D. Proposed Agreed Protective Order

Defendants might be willing to enter into a standard joint agreed protective order, such as the one attached hereto as Exhibit A, which would prevent the parties from distributing materials incident to this litigation to third-parties. However, thus far, Drina has not consented to proceed in this manner. Defendants otherwise oppose creating new, weird, atypical rules unfounded in Texas jurisprudence.

III. Prayer

For these reasons, Defendants, Anita Brunsting, Amy Brunsting, and Carole Brunsting pray that Carl Henry Brunsting's Motion for Protective Order be denied. Additionally, Defendants pray for such other and further relief (general and special, legal and equitable) to which they may be entitled, collectively, individually or in any of their representative capacities.

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Respectfully submitted,

/s/ Brad Featherston

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ATTORNEYS FOR CAROLE ANN BRUNSTING

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 31st day of July, 2015, to the following in the manner set forth below:

Candace Louise Curtis – Pro Se:

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Attorneys for Carole Ann Brunsting:

Darlene Payne Smith
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Attorneys for Anita Kay Brunsting:

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The Mendel Law Firm, L.P.
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NEAL E. SPIELMAN

DV

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Stan Stanart
County Clerk
Harris County

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	NO. 412,249-401	PROBATE COURT 4
CANDACE LOUISE CURTIS	§	IN PROBATE COURT
Plaintiff,	§	
V.	§	NUMBER FOUR (4) OF
ANITA KAY BRUNSTING, ET AL	§	
Defendants.	§	HARRIS COUNTY, TEXAS

RESPONSE TO DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER

The Court has raised very valid issues regarding the questions before it, and has asked to be briefed. Plaintiff Curtis therefore submits the following analysis of the questions raised and, although seemingly complex at first view, the matter is really quite simple. There is only one primary premise and thus the first principles require answer to only one inquiry, which is whether or not the interception and dissemination of the challenged electronic communications was lawful.

Plaintiff will respectfully show that the greater weight of unrebutted presumptions falls in favor of the illegality of the recordings, and that judicial discretion would best be exercised with caution, as the Court cannot allow dissemination without proof of the legality of the recordings without also becoming a principal to the crime of dissemination.[1]

Summary of the Argument

1. The recordings are evidence of illegally intercepted electronic communications, a second degree felony[2] in Texas with a moderate severity level.
2. Illegally intercepted electronic communications may not be received in evidence nor exchanged under the pretext of discovery in any civil action, as unauthorized possession or dissemination of illegally intercepted electronic communications is a second degree felony which, as noted, the Court would be unwise to participate in.

[1] Collins v. Collins, 904 S.W.2d 792 (Tex. App. 1995)
[2] Texas [Penal] Code Annotated Sections 12.33, 12.35, 16.01 (West 1997); 1997 Tex. Gen. Laws 1051; Texas [Civil Practice and Remedies] Code Annotated Sections 123.002, 123.004 (West 1997); Texas Code of Criminal Procedure Annotated Article 18.20 (West 1997).

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3. The burden of bringing forth evidence is on the proponents of the legality and admissibility of the recorded wiretap conversations, as the presumption that intercepted electronic communications found in the possession of third parties, meaning persons not privy to the conversations, are presumed unlawful and the burden of showing that the challenged recordings meet one of the statutory exceptions is upon the Defendant disseminators.
4. The Court is without discretion and no agreement is necessary. Under the circumstances here, the Court must issue a protective order, even if only temporary, pending resolution of the issue of whether or not interception and dissemination of the challenged electronic communications was lawful.
5. The attached exhibits in a chronology of relevant events reveals that the recordings are the fruit of an illicit conspiracy targeting Carl and Drina that did not involve Nelva Brunsting and, Defendants' unanimous claims are defeated in their own words uttered at or about the time of the recordings, as hereinafter more fully appears.

Texas Authority on Admissibility

The admissibility of evidence illegally obtained is tempered by Tex.R.Civ.Evid. 402, which provides in pertinent part that, "[a]ll relevant evidence is admissible, except as otherwise provided ... by statute." Consequently, before the recordings can be held to be inadmissible, the Plaintiff(s) must show their exclusion is required under either the federal or state statute. Section 2511(1) of the federal wiretap statute[3] prohibits the use or disclosure of communications by any person except as provided by statute. *Gelbard v. United States,* 408 U.S. 41, 51-52, 92 S.Ct. 2357, 2363, 33 L.Ed.2d 179 (1972) (witness could not be forced to disclose testimony from illegal wiretap to grand jury).

Section 123.002 of the state wiretap statute states that a party has a cause of action against any person who "divulges information" that was obtained by an illegal wiretap. TEX.CIV.PRAC. & REM.CODE § 123.002.

Section 123.004 states that a party whose communication is intercepted may ask the court for an injunction prohibiting the "divulgence or use of information obtained by an interception." TEX. CIV.PRAC. & REM.CODE § 123.004.

[3] Title III of the Omnibus Crime Control and Safe Streets Act of 1968, more commonly known as the "Wiretap Act," is found at 18 U.S.C. §§ 2510-2522.

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Although the Texas wiretap statute does not specifically provide for the exclusion of illegally obtained "communications," the provisions for a cause of action for divulging wiretap information and the injunctive remedies provided in section 123.004 are sufficient to rebut the presumption of admissibility under rule 402.

Because the tapes were illegally obtained under the federal and state statutes, the trial court should not allow their dissemination, or admit them into evidence, under the exception provided at Tex.R.Civ.Evid. 402.

The recorded conversations are not admissible because the criminal statute dealing with the use of the intercepted communications criminalizes their dissemination, and the civil statute provides a method to prevent dissemination.

> *To permit such evidence to be introduced at trial when it is illegal to disseminate it would make the court a partner to the illegal conduct the statute seeks to proscribe. Gelbard, 408 U.S. at 51, 92 S.Ct. at 2362-63; Turner, 765 S.W.2d at 470.*

Exceptions

In addition to the numerous governmental or agency exceptions to the general rule, it is not unlawful to intercept any form of wire, oral or electronic communications between others if one of the persons is a party to the communication or one of the parties has given their consent to the interception. Tex. Civ. Prac. & Rem. Code §123.001(2); Tex. Pen. Code§16.02(c)(3)(A); 18 U.S.C §2511(2)(c); Kotrla v. Kotrla, 718 S.W.2d 853, 855 (Tex.. App. - CorpusChristi 1986); See also, Hall v. State, 862 S.W.2d 710(Tex. App. - Beaumont 1993, no writ); Turner v. PV International Corporation , 765 S.W.2d 455, 469-71(Tex. App. - Dallas 1988, writ denied per curiam, 778S.W.2d 865 (Tex. 1989).

Interception, Possession, and Dissemination

The Right to Privacy is the Controlling Presumption

The right to privacy is held in such high esteem that the U.S. Congress and the Texas Legislature have both made it a felony to illegally intercept, possess or disseminate electronic communications. There are very limited exceptions none of which apply here.

The mandatory but rebuttable presumptions are that the participants to these phone conversations had a reasonable expectation of privacy; that the right has been violated and; that the burden of showing the interception of those electronic communications meets one of the statutory exceptions is upon persons who were themselves not a party to the private electronic

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communications, but who we find to be in possession of and disseminating the challenged recordings.

Defendants have produced no evidence tending to show that the intercepted electronic communications meet any of the lawful exceptions and the ball is in their court. If the wiretap recordings cannot be shown by the Defendants to meet one of the statutory exceptions, the recordings are prima facia unlawful, regardless of any alleged motives for their interception.

While no more than the foregoing law and fact summary is essential to the disposition of the singular issue before the Court, it seems necessary to address Defendants' unanimously disingenuous assertions and thus Plaintiff does so with the attached Memorandum.

The attached memorandum on the matter of context and color, with attached exhibits, is hereby incorporated by reference as if fully restated herein.

Plaintiff Curtis respectfully submits the following proposed order.

Respectfully submitted,

Candace L. Curtis, *Pro se*
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925-759-9020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9th day of August 2015, to the following via email:

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CANDACE L. CURTIS

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No. 412,249-401

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

TEMPORARY PROTECTIVE ORDER

On August 3, 2015 the Court heard and considered CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER and Defendants' response thereto.

At issue are recordings of intercepted electronic communications between Plaintiff Carl Henry Brunsting and his wife Drina.

After hearing on the merits and reviewing briefs submitted by the parties, the Court is of the opinion that the recordings in point are "Protected Communications" as that term is defined at 18 U.S.C. §§2510(1) & 2510(12) and that a protective order is necessary to protect privacy rights pending disposition of the pending questions at issue.

IT IS THEREFORE ORDERED that any person or entity subject to this Order-including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -shall adhere to the following terms, upon pain of contempt and any other applicable civil or criminal penalties:

1. No person or entity shall, in response to a request for discovery or subpoena issued in this action, produce any Protected Communication for any third party or person absent further order of this Court.

2. To the extent a Protected Communication is or has already been produced in response to a request for discovery or subpoena issued in this action, any recipient of such production shall (a) immediately surrender any and all documents that contain or

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reflect a Protected Communication to real party in interest Carl Henry Brunsting through his Counsel of Record and (b) destroy any copies made of such Protected Communication, as well as any derivative materials that reflect a Protected Communication on any medium of storage whatsoever.

3. Any party to this action that issues a request for discovery or subpoena calling for the production of a Protected Communication shall simultaneously provide the recipient of the discovery request or subpoena with a copy of this Protective Order. To the extent a party to this action has already issued such a request or subpoena, such party shall provide a copy of this Protective Order to the recipient within three (3) business days of the entry of this Order.

4. Any person who receives a request for discovery or subpoena in this action calling for the production of a Protected Communication shall, without revealing the substance or content of a Protected Communication, provide both the issuing party and the Court with a general description of that Protected Communication so that the issuing party can make an application to this Court for production of that Protected Communication, and that Plaintiff Carl Henry Brunsting can respond to that application.

IT IS FURTHER ORDERED that on or before _____, sworn affidavits are to be provided by Defendants Anita Brunsting, Amy Brunsting, and Carole Brunsting, stating any personal knowledge with regard to every recording made since July 1, 2010 within the following categories:

- All audio or video recordings of meetings, conversations, telephone messages, or other communications with Elmer, Nelva, or any of the Brunsting Descendants concerning Brunsting Issues,
- All audio or video recordings of Nelva's execution of any documents.
- All audio or video recordings of evaluations of Nelva's capacity,
- All other audio or video recordings of any Brunsting family member, and
- All investigations made of any Brunsting family member, including any surveillance logs or reports.

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The sworn affidavits shall identify every party involved in making the recordings and specify the date, location, and means used to make the recordings, the current location of all original recordings and all copies of all recordings, all parties to whom the contents of recordings have been disclosed, and all uses which have been made of the recordings.

IT IS SO ORDERED!

Signed August, _____, 2015.

_____
Christine Butts, Judge
Harris County Probate Court No. 4

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NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

MEMORANDUM OF FACTS SUPPORTED BY DEFENDANTS' OWN DISCLOSURES

Plaintiff Candace Louise Curtis respectfully submits for the perusal of the Court this memorandum of facts adding to the inquiry context and color revealing the true nature of the intentions behind the unlawful interception and dissemination of the private electronic communications at issue.

Statement of the Issue

Recordings of private electronic telephone conversations between plaintiff Carl Brunsting and his wife Drina Brunsting have been disseminated to all of the parties to the present lawsuits. These recordings, if any, were requested by Plaintiff Brunsting to be produced by the Defendants in the Petition for Deposition Before Suit filed by Carl Brunsting March 9, 2012, when there were no other parties, however, the recordings were not disclosed until July 5, 2015.

Plaintiff Carl Henry Brunsting, along with his wife and attorney in fact Drina Brunsting, challenged the recordings as the product of the illegal interception of electronic communications, in violation of state and federal wiretap laws, and thus seek protective orders.

In DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Defendants unanimously assume the following postures:

1. *It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee.*

2. *On information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the calls and/or which triggered in accordance with its own operation. Either way, one-if not both-participants had full knowledge that he/she was being recorded.*

3. *Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought.*

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A Recital of Known Facts

1. There are known recordings of private phone communications between Carl and Nelva and between Carl and his wife Drina, which are the object of the application for protective order.

2. The recordings were disseminated by Defendant Anita Brunsting, who is not a party to any of the disclosed communications.

3. We have a claim by Carl Henry Brunsting and his wife Drina that the recordings were illegally obtained.

4. We have a unanimous response from all three Defendants asserting upon information and belief that the recordings were legally obtained but answers to interrogatories on the subject indicate that none of them know anything individually.

5. The question of admissibility hinges upon the legality of the interception and dissemination of the communications.

6. A presumption that the right of privacy has been violated is primary and stands unrebutted by competent evidence to the contrary.

7. The burden of proof as to the legality of the acquisition and dissemination of the recordings is on the proponent of the assertions that the recordings were obtained legally and are therefore admissible.

8. The proponent of the legitimacy and admissibility of the recordings objects that declaring the facts necessary to qualify the recordings as legally obtained evidence before dissemination is somehow onerous, but at the same time want carte blanch to disseminate the recordings to persons not privy to the conversations under the auspices of discovery and disclosure.

9. Unless the recordings can be qualified as legally obtained they are inadmissible and cannot be disseminated lawfully.

10. There are questions as to the recordings' origins and Defendants file a joint motion claiming the existence of specific facts while taking no individual responsibility for personal knowledge.

11. Anita Brunsting, through her counsel Brad Featherston, disseminated the recordings and, thus, Anita Brunsting would have at least some personal knowledge regarding the chain of custody and control, and both now share in the culpability and attendant civil liability.

12. Assertions that the recordings were made on an answering machine would indicate personal knowledge by one if not all of the Defendants.

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13. An assertion that the recordings were authorized by Carl Brunsting requires evidentiary support from the proponent of the claim, and there has been none.

14. Assertions that Carl Brunsting installed and activated the Answering Machine are inconsistent with the Defendants' emails of the same date of the purchase of the voice recorder showing they were conspiring to get guardianship over Carl.

15. Carl was both incompetent and the proper subject of Defendants' intended guardianship effort or he was competent to install and activate the "Answering Machine" that Defendants insist he made the recordings on. Both of these things cannot be true.

16. In the Bates stamped disclosures there is a receipt for a signal activated SONY digital voice recorder purchased four days before the first dated recording on the disseminated CD. When combined with the attached email and other exhibits talking about getting guardianship over Carl, continuing the Private Investigator over the weekend, knowing where Carl and Drina were and what they were doing at that very point in time, and all of these events in the same time period as other documented activities, provides a presumption that the circumstances and intentions surrounding the acquisition of the recordings are not what Defendants claim, as hereinafter more fully appears.

The hierarchy of presumptions is as follows:

1. The participants to a private telephone conversation have a reasonable expectation of privacy against electronic eavesdropping.

2. The waiver of a known right must be a knowing and intelligent act done with sufficient knowledge of the relevant circumstance and likely consequences, and it must be both a voluntary and an overt act.

3. There is no affirmative evidence of such waiver.

4. Unless rebutted the presumption that the recordings were illegally obtained is not only controlling but the prudent course.

The True Context and Color

The only probative value these recordings could possibly have is in the fact of their very existence. Defendants argue that the content of the challenged recordings adds context and color to the events of the time showing that Nelva was preparing for Carl's alleged divorce. As in all other instances Defendants fail to provide anything but claims of Nelva's intentions based upon the strength of the honor and integrity of their word alone.

Despite all the posturing and game playing the evidence will show the Defendants are intractably disingenuous and that they illegally intercepted the private electronic communications as part of a conspiracy to steal the family inheritance. That conspiracy involved attempts to have

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Nelva declared incompetent and to gather what they thought would be evidence to support guardianship over Carl.

The evidence will further show Defendants stalked Nelva through her email and banking activities online, in addition to tapping her phone and recording every conversation involving anyone who spoke with Nelva on the phone, including Plaintiff Curtis in California.

Candace Freed took her instructions from ANITA despite her claims it was Nelva who was making the requests for changes to the trust. (Exhibit A)

The October 25, 2010 phone conference called for by Candace Freed excluded Carl and Nelva and was ultimately about having Nelva declared incompetent, which they failed to achieve by mid-November. The "law firm" did not keep an audio recording of that conference.

There is no evidence Nelva even knew of these changes before Plaintiff Curtis' 10/26/2010 phone call, after which Nelva sent Candace her hand written note repudiating the alleged 8/25/2010 QBD.

Defendant Carole Brunsting sent an email about overhearing Nelva's conversation on the phone with Candace Freed. (Exhibit B)

Freed sends a follow up email regarding the failed attempt at getting Nelva declared incompetent on Nov. 17, 2010, apparently referring to this same conversation. (Exhibit C)

Despite Defendant Amy Brunsting's claims of not being involved before Nelva's death, Amy and Anita corresponded with Candace Freed December 23, 2010 and on several other dates prior to Nelva's demise. (Exhibit D)

On March 8, 2011 Anita emails Carole, Amy and Candace bragging about reminding Nelva she was no longer trustee and no longer had access to the trust. (Exhibit E)

March 17, 2011 Tino (Nelva's caregiver) buys a Sony Digital Voice Recorder, (Brunsting 004570) which shows one ICD-PX312 digital voice recorder purchased by Tino at Best Buy in Houston. (Exhibit F)

March 17 and 18, 2011 emails mention the PI and talk about getting guardianship over Carl. (Exhibit G 1-3)

March 21, 2011 is the record date of first wiretap .wav file (received from Brad on CD 7/5/2015) (See Carl Brunsting Petition for Protective Order)

On March 24 and 25, 2011 there are large trust-prohibited transfers of Exxon Mobil and Chevron Stocks labeled as "gifts". (See Report of Special Master)

On March 29, 2011 Amy and Anita communicated with Freed (Exhibit D)

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April 22, 2011 is the record date of second .wav file (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order)

Then on May 11, 23 and 25, and on June 14 and 15, there are more large trust-prohibited transfers of Exxon Mobil and Chevron Stocks. (Report of Special Master)

July 27, 2011 Anita corresponds with Freed (Exhibit D)

August 16, 2011 Anita corresponds with Freed (Exhibit D)

September 20, 2011 Amy and Anita correspond with Freed (Exhibit D)

February 27, 2015 is the record date of the third and fourth .wav files (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order), indicating these two recordings had been excerpted from a master storage disk containing even more undisclosed recordings.

There is an overwhelming volume of evidence clearly showing more of the same pernicious intent, but since the matter before the Court is limited to the singular question of the legality of Protected Communications, Plaintiff Curtis will not respond to the plethora of Defendants' extemporaneous expressions of disingenuous, self-serving bias, and otherwise irrelevant assertions.

Respectfully submitted,

Candace L. Curtis, *Pro se*
218 Landana Street
American Canyon, California 94503
occurtis@sbcglobal.net
925-759-9020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9th day of August 2015, to the following via email:

Attorneys for Anita Kay Brunsting

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
brad@meddellawfirm.com

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Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

Attorneys for Drina Brunsting as
attorney-in-fact for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
bayless@baylessstokes.com

Attorneys for Carole Ann Brunsting

Darlene Payne Smith
Crain, Caton & James
Five Houston Center
1401 McKinney, 17th Floor
Houston, Texas 77010
dsmith@craincaton.com

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CANDACE L. CURTIS

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EXHIBIT
A

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05/12/2015 10:20:P0217

PM TRUST REVIEW MEETING

Signing Date & Time: Wed. Aug. 4th 2 pm.
Fee:
Paid: Mail:

Client Name: Brunsting, Nelva

Date: 07/30/10 Estate Size: 2 mil±

IRA: Husband - N/A Wife -

Current Address/Phone: 13630 Pinerock Hou TX 77079

Date of Trust/Restatement: Previous Amendments? Yes.

Subtrust Funding Done previously? Yes. DT & ST

AMENDMENT: ✓ QBD(PAT)✓ Other Instr Ltr ✓ HCPOA✓
✓ ApptSUCCTee/HIPAA✓ ExTPOA ✓COT ✓POA✓ DIR
Anita Kay Riley & Amy Ruth... Co-tees
or Survivor of Them. Then Most

✓ Distribution Change (QBD):

PAT QBD

IF PAT QBD then:

Each beneficiary Trustee of Own Trust: ✓ yes no

except for Carl, Anita & Amie as Co-tees for Carl
(except they have rt to name Carl as ordy 4 own Succ Tee)
Distribution of PAT: need to

Same as LT except need language
about the last amend (QBD) less early distrs.

V&F 000687

Adv TRIAL EXHIBIT

08/12/2015 10:20 P0218

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_____ **Specific Distribution:**

_____ **Ultimate Distribution:**

_____ **HEALTH CARE DOCUMENTS:**

1ST Agent: Carol

2nd Agent: Anita

3rd Amy

IRA TRUST: _____ **yes** _____ **no** For whom? _____ husband _____ wife

Trustees upon disability of Trustor or spouse: _____

Each beneficiary Trustee of own trust? _____ yes _____ no

SS# of Surviving Spouse/Beneficiaries: _____

Oct 12 2015 10:20: P021 9

FUNDING:

Real Estate _____

Which property has NO MORTGAGE? _____

_____ Recording HS Deed

_____ Apply for HS Exemption

Tax-deferred Assets _____

_____ Bank & Brokerage Accounts
_____ Life Insurance
_____ Oil & Gas Interests
_____ Credit Union Accounts
_____ Partnership Interests
_____ CDs
_____ Safe Deposit Box
_____ Stocks and Bonds
_____ Motor Vehicles
_____ Sole Proprietorship Assets
_____ Promissory Notes & Mortgages
_____ Annuities

Additional Documents: _____

NOTES:

Needs new DFPOA order

Anita

Carol

Amy

Any Name Changes for children? _____ **Any children Predecease?** No.

If Yes, who: _____

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FEES:

QUOTED: $ _____ **(Plus Expenses)**

AMOUNT REC'D: None **DATE:** _____

BALANCE DUE: _____

DOCUBANK? _____

Cost Pat QBD 1200.
Hipaa Pkg 250 - med POA
D.F.P.O.A 150.-
Appl. of Succ Tee
New Card.

Courtesy discount $150.-

Cy

G:\PM Docs\Checklists\5-1 Checklists\PM Trust Review Mtg.wpd

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Anita - called

Carl has encephlytes

amendments to trust

Anita & Aimee as Co-Tees

Charge list under ME

Carol
Anita
Aimee

financial P.O.a

Anita
Carol
Aimee

Amend to trust /PAT's w/ Aimee to be Co-Tees.
to correct Supp Needs to.

Sp needs?

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08112015 1020: P0222

From: Anita Brunsting
To: Candace Freed
Sent: 10/6/2010 8:19:06 PM
Subject: Brunsting Family Trust

Candace,

I spoke to mom tonight and she agreed to resign as trustee and appoint me as trustee. I told her that you would be contacting her to re-explain things and make sure she understood what was happening.

If you have any questions, my cell is 361-550-7132.

Thanks,
Anita

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EXHIBIT B

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08/12/2015 10:20:00 PM

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Thursday, October 28, 2010 9:00 AM
To: Candace Curtis
Subject: Re: One more

Candy,
The more I think about this the whole key is Carl. When I was listening to Mother's call with Candance, Mother told Candace that Carl was trustee, not Anita and was not following the changes Candane was telling her she had made to have Carl removed.. Legally, I wonder if what Candace did was right without consulting Carl or his power of attonery since Carl has always been present at all meetings.

--- On **Thu, 10/28/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: One more
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Thursday, October 28, 2010, 10:34 AM

Candace DOES know she fucked up. That's why she had such a nasty attitude towards both you and I. Anita is smug and Amy plays dumb.

I hope Carl goes home today! If he does I hope the sun is shining. 10 minutes smiling into the sunshine + coffee + the Beatles = a sharper, happy Carl. I have a strong feeling that he will recover in leaps and bounds ALL ON HIS OWN, with support from his wife and family. The fact that Daddy is looking over us gives me strength. I can feel him stronger than ever before.

My suggestion is that when Dr. White finds Mother competent the following should happen:

1. You need to complete your time-line to demonstrate that due to various factors (badgering, low oxygen, Carl's illness, her illness, pneumonia, general stress and worry due to all of this), Mother was incompetent and under extreme duress when she signed everything she signed, particularly the Power of Attorney. We can compose a letter to Candace for Mother to sign, demanding that she wants to have papers drawn up to revoke anything she agreed to between the first of July and now.

2. As Mother gathers strength over the next few weeks she will go to her MD Anderson appointments, etc. and move towards treatment and recovery. I want to stress nutrition, adequate good sleep, and stress-free living.

3. In the meantime she can sell what she needs to, to pay for Robert or Tino or whoever Drina needs to assist her with Carl (if she even needs someone - Carl may recover a lot in a few weeks at home). The cost will be minimal compared to the $100k shithead got to buy her house.

Going forward, Mother will have to tell Candace IN WRITING what she wants done with the trust. You can help her compose the letters. There can be no question when it's in writing. You can assist Mother in reviewing the paperwork before she signs (at home - at her leisure), to make sure all her wishes have been incorporated. This should never be done under the pressure and duress she was subjected to. Mother can take as much time as she needs to read and understand that everything will be as she wants it to be.

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The fair and equitable solution in my mind is:

Make all five of us successor co-trustees and require a majority to make any change whatsoever. Then, if Mother steps down there will be no shenanigans. Everything will be transparent and we'll all know everything everyone else knows. That way when Anita wants to sell the farm, or move away from Edward Jones, she can put it up for a vote among us. All five of us are intelligent people and none of us can honestly say we have NEVER made a wrong choice in our lives. This way Mother will be at peace to live out her life, and she will die knowing that she has not pitted one against the other, or given control of one over the other, or played favorites, or been bullied into doing something she didn't really want to do, or would not have done in the first place.

Now this may go AGAINST the norm, or what Candace and her ilk would recommend, but fuck them. They are attorneys who get paid to do what their clients want them to do and they love having to draw up documents. Fees, fees, fees, $$$$$$$$$$$$$

If Anita succeeds in her agenda and becomes trustee, we should have her competency tested just to show her what it feels like. If everything stays the way it is right now, that's the first thing I'm going to do when the day comes that she's in charge of me. Na, Na, Na, Na, Na, Na.

Love you,

C

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: occurtis@sbcglobal.net
Sent: Wed, October 27, 2010 9:32:06 PM
Subject: One more

And do not overlook an exploration of the family's motives in requesting a competency evaluation, she cautioned. Do family members have reason for wanting their oddly behaving relative to be declared incompetent?

This is from an article about not rushing to declare and elderly person incompetent.
Mother passes the smell test and I have to make sure Tino does not let her out of the house without her clothes being ironed and SEE!!! MOTHER MADE THE APPOINTMENT TO GET HER HAIR DONE!!! CANDY THAT IS IT!!! MOTHER DOES CARE ABOUT HER APPEARANCE!! She will not go out without her makeup one and I have to get her a nail file all the time. Mother also called Edward Jones on her own and sold $10K so she would have enough money to live on.

She was temporarily incompetent when she was to low on oxygen and if they made her walk to Candace's offic I know for a fact her levels were to low because Dr. White joked about it. Tino did not take her so she had to walk from the parking lot to the office. She did not understand what she was signing because she was to short o breath and I can prove that. Candane has to know she F***ed up.

--- On **Wed, 10/27/10, Carole Brunsting** ***<cbrunsting@sbcglobal.net>*** wrote:

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Subject: Found this
To: occurtis@sbcglobal.net

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Date: Wednesday, October 27, 2010, 10:38 PM

There are any number of situations that may cause you to question the competency of a family member to make sound life decisions, such as when:

- An elderly person suddenly changes a will or trust in a manner that is significantly different from all previous wills or trusts, which could result in will litigation if not appropriately handled during the elder's life.
- A family member has suspicion that the elderly person is being unduly influenced by others

Anita is unduly influencing Mother and now Amy has piled on. Mother never would have made these changes on her own. This was all done by the hand of Anita who put herself in charge of everything.

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Subject: Fw: Nelva Brunsting
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 3/11/2015 6:24 PM
To: Rik Munson <blowintough@att.net>

08112015:10:20:P0228

On Wednesday, November 17, 2010 2:38 PM, Candace Freed <candace@vacek.com> wrote:

Amy and Family, Thank you for the update on your mom, Nelva Brunsting. The purpose of the conference call and the suggestion that Ms. Brunsting be evaluated was based solely on conversations that I had with Ms. Brunsting and to let you all know that I had concerns based on those conversations. If she has been evaluated by her physician and you as a family are comfortable with his or her diagnosis, then you have addressed the concerns that I had. I appreciate your letting me know the opinion of the doctor. I hope your mom is doing well and she continues to improve.

Please let me know if I can be any further assistance.

Very truly Yours,

Candace L. Kunz-Freed
Attorney at Law

Vacek & Freed, PLLC
14800 St. Mary's Lane, Suite 230
Houston, Texas 77079
Phone: 281.531.5800
Toll-Free: 800.229.3002
Fax: 281.531.5885
E-mail: candace@vacek.com
www.vacek.com

We have moved! Our new office address is as shown above. We are one exit west of our old office building. Exit Dairy Ashford. Turn south on Dairy Ashford. St. Mary's Lane is a side street one block south of I-10 Katy Freeway. Turn west on St. Mary's Lane. Our building is in the northwest corner of the four-way stop.

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EXHIBIT D

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DEFENDANTS' PRIVILEGE LOG

Privilege No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002054 - V&F 002057 (1)	1/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002058 - V&F 002060 (2)	7/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002061 - V&F 002066 (3)	12/08/11	Candace L. Kuntz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002067 - V&F 002070 (4)	12/23/10	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002071 - V&F 002072 (5)	3/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

17-20360.2558

Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002073 - V&F 002075 (6)	9/20/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002076 (7)	11/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002077 - V&F 002078 (8)	12/28/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002079 (9)	1/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 0020890 (10)	1/31/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Thompson Coe Fax:7134038299 Jan 31 2014 02:55pm P006/014
17-20360.2559

Bate-Nos.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002081 (11)	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (12) 002082 - V&F 002085	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (13) 002086 - V&F 002089	3/20/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (14) 002090 - V&F 002093	3/29/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (15) 002094	4/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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17-20360.2560

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Thompson Coe Fax:7134038299 Jan 31 2014 02:55pm P007/014

08112015:1020:P0233

Bates No.	Date	Sender	Recipient	Document Type	Subject	Privilege Asserted
V&F 002095 - V&F 002096 (16)	1/24/11	Anita Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding stock valuation.	Attorney-Client Communication
V&F 002097 (17)	1/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002098 (18)	7/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002099 (19)	8/16/11	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002100 (20)	12/8/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002101 - V&F 002102 (21)	12/20/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication
V&F 002103 - V&F 002104 (22)	12/20/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P008/014

17-20360.2561

Privilege Log No.	Date	Author(s)	Recipient(s)	Document Type	Subject	Privilege
V&F 002105 - V&F 002106 (23)	12/28/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002107 (24)	1/03/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding title of the Buick.	Attorney-Client Communication
V&F 002108 (25)	1/05/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding Trust Information Sheets.	Attorney-Client Communication
V&F 002109 - V&F 002112 (26)	1/09/12	Candace L. Kuntz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Email string between attorney and client regarding distribution of trust funds.	Attorney-Client Communication
V&F 002113 - V&F 002114 (27)	1/22/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication
V&F 002115 - V&F 002116 (28)	1/23/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication

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Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002117 - V&F 002118 (29)	1/23/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002119 - V&F 002121 (30)	1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust documents.	Attorney-Client Communication
V&F 002122 - V&F 002123 (31)	1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002124 - V&F 002125 (32)	1/31/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding Farmland LLC.	Attorney-Client Communication
V&F 002126 - V&F 002127 (33)	1/31/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002128 (34)	2/14/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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17-20360.2563

Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002129 (35)	2/15/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding estate planning documents.	Attorney-Client Communication
V&F 002130 - V&F 002132 (36)	2/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Summer Peoples	Email	Attorney communications to client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002133 - V&F 002139 (37)	3/02/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding trust value report.	Attorney-Client Communication Attorney Work Product
V&F 002140 - V&F 002142 (38)	3/06/12	Amy Ruth Brunsting	Candace L. Kunz-Freed	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002143 - V&F 002148 (39)	3/14/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P011/014

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Bates No.	Date	Author	Recipient	Description	Re	Subject	Privilege
V&F 002149 (40)	3/20/12	Summer Peoples	Amy Ruth Brunsting, Anita Kay Brunsting, and Chip Mathews	Email		Attorney communications to client regarding request for wills.	Attorney-Client Communication
V&F 002150 - V&F 002151 (41)	3/20/13	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email		Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002152 (42)	3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed, Chip Mathews, and Amy Ruth Brunsting	Email		Attorney communications to client regarding December of 2011 accounting.	Attorney-Client Communication
V&F 002153 (43)	3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email		Attorney communications to client regarding accounting.	Attorney-Client Communication
V&F 002154 - V&F 002155 (44)	3/27/12	Anita Kay Brunsting	Chip Mathews, Amy Brunsting, Candace L. Kunz-Freed	Email		Email string between attorney and client regarding accounting.	Attorney-Client Communication
V&F 002156 - V&F 002158 (45)	3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Chip Mathews	Email		Email string between attorney and client regarding asset lists.	Attorney-Client Communication

17-20360.2565

Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P012/014

Bate No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002159 (46)	3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding asset lists.	Attorney-Client Communication
V&F 002160 - V&F 002161 (47)	3/29/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding assets and expenses.	Attorney-Client Communication Attorney Work Product
V&F 002162 - V&F 002163 (48)	3/29/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002164 - V&F 002166 (49)	3/30/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Email string between attorney and client regarding asset list.	Attorney-Client Communication
V&F 002167 (50)	4/12/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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17-20360.2566

Privilege Log No.	Date	Author(s)	Recipient(s)	Production	Subject	Privilege
V&F 002168 - V&F 002183 (51)		Candace L. Kunz-Freed		Chart	Attorney notes/history of representation	Attorney-Client Communication Attorney Work Product
V&F 002184 - V&F 002191 (52)	11/22/11			Document	Authorization for Release of Protected Health Information	Attorney Work Product
V&F 002192 (53)	11/22/11			Document	Authorization for Release of Information	Attorney Work Product

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17-20360.2567

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P014/014

08112015:1020:P0240

EXHIBIT

E

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08/15/2015 10:20:P024

From: Candace Curtis (occurtis@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Sat, February 18, 2012 11:29:12 AM
Cc:
Subject: Fw: New Development

----- Forwarded Message ----
From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Tue, March 8, 2011 7:15:32 PM
Subject: RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

Not Official Document

P-9

08112015:1020:P0242

EXHIBIT F

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TIME SHEET

08/12/2015 10:20:P0243

Employee Name: Faustino Vaquera **Title:**

Week: March 15 — March 19

Date	Start Time	End Time	Regular Hrs.	Total Hrs.
3-15 Tues	8:30 am	12:00 am	15.30	
3-16, Wed	12:00 am	2:00 pm	14	
↓	4:00 pm	12:00 am	8	
3-17, Thur	12:00 am	9:30 am	9:30	
3-[redacted]	6:30 pm	12:00 am	5:30	
3-18 [redacted] Fri	12:00 am	6:00 pm	18	
	WEEKLY TOTALS:		70 ½	

Employee Signature: [signature] **Date:** 3-18

Supervisor Signature: **Date:**

70.5
x 15.00
= 1057.50

Groceries & Food = 126.26

Best Buy Digital Voice Recorder 64.94

191.20

Total = 1248.70

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17-20360.2571

09-24-2015 : 0220 : 202414

WELCOME TO BEST BUY #216
HOUSTON, TX 77024
(713)647-6004

Keep your receipt!

Val #: 0422-1046-6045-3089

0216 003 2499 03/17/11 18:22 00005044

1792142 ICDPX312 59.99
ICDPX312 DIGITAL VOICE RECORD
ITEM TAX 4.95
6094193 RZ SILVER 0.00 N
REWARD ZONE PREMIER SILVER
MEMBER ID 0329918420

SUBTOTAL 59.99
SALES TAX AMOUNT 4.95
TOTAL 64.94

xxxxxxxxxxx4030 DEBIT 64.94
FAUSTINO VAQUERA JR
APPROVAL 132943
REFERENCE NUMBER: 0216003

ALEX,
THANKS FOR SHOPPING AT BEST BUY TODAY!
YOUR REWARD ZONE BALANCE AS OF 03/08/11
POSTED POINTS: 153
Go to MyRZ.com FOR MORE INFO

Congratulations! As an added benefit of being a Reward Zone program Premier Silver member, you may return eligible products up to 45 days from purchase date.

Dear Valued Customer,

To help keep prices low [illegible]

directly or indirectly by the products listed on this receipt.

THE SHACK THANKS YOU.

RADIOSHACK 01-8020
Kroger Plaza Sc
14356 Memorial Dr
Houston, TX 77079-6704
(281) 496-9429

Order: 057553 03/17/2011 08:14P Term #002

Helped By: 001 (MAR)
Entered By. 001 (MAR)

4200223 3' 1/8' M-M PATCH CABLE 1 8.39

Subtotal 8.39
Tax 8.25% 0.69
Total 9.08

Credit Card 9.08

Change Due 0.00

Acct# xxxxxxxxxxx0307 M
Card Type VI
Tran# 12087148
Auth# 161235 9.08
Host Captured Y

The card holder identified hereon may apply the total amount shown on this receipt to the appropriate account to be paid according to its current terms.

I agree to pay above total according to card issuer agreement.

Your name, address and the original sales receipt are required for all refunds. Sales and returns are subject to the terms and conditions identified on the back.

Shop online 24/7 at
www.radioshack.com

COPY

08/12/2015 10:20 PO245

EXHIBIT G

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08/12/2015 10:20:20 PG 2/6

From: Amy Tschirhart <at.home3@yahoo.com>
Sent: Wednesday, August 18, 2010 12:58 PM
To: Anita Brunsting; Carole Brunsting; Candy Curtis
Subject: CPA's advice

Hi,

I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.

She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.

I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing *any* of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

COPY NOT FOR FILING

08/12/2015 10:20:P0247

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Friday, March 18, 2011 11:59 AM
To: Anita Brunsting; Amy Tschirhart; Candace Curtis
Subject: Re: atty for guardianship

I think that Drina has always projected her own family issues onto ours. She was completely distanced from her own family until a year ago when her brother passed away and now she is talks about the relationship with her dad like they have been close forever which has not been the case.

She must have had some very bad things happen to her in her childhood and slowly but surely she twisted Carl's mind to go along with everything she did and said. I think you are right that this will have to play itself out to see what she does. She has been waiting for the day she and Carl get the "big" trust payout and then it will be see you later chumps!

--- On **Fri, 3/18/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: atty for guardianship
To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
Date: Friday, March 18, 2011, 1:49 PM

The Brunsting family has never been very demonstrative of their love for one another, but I chalk that up to being Dutch. What I cannot seem to wrap my arms around is the extreme coldness of Drina and Marta. They have always been limp when hugged and hugging is one of the best things in the world. One power hug and all my cares fly out the window. I believe it must be a genetic brain chemical imbalance in Drina's family. She has spent her life with Carl trying to distance HIM from his family and turn him into a cold fish like her. How did she ever get pregnant in the first place? Maybe we should try to get some DNA from Marta and Carl and do a paternity test. Wouldn't it be something if he wasn't her father?????????? LOL

Frankly, as long as the trust is safe, we should probably just let nature take its course and sooner or later we will get Carl out of their clutches and into ours. He might be pissed off for awhile, but I have some small faith that once he can reason better he will see that we only seek what is best for him in the long run BECAUSE WE LOVE HIM. Once he is able to reason and be reasoned with, and has regained some control of his life, if he chooses to go back to his moron wife and their moron spawn, I will mourn him as if he were dead. Until such time I will assume that, somehow, at some point in his recovery, he will realize how miserable the bitch has made his life. He might see that all she has ever cared about is money and how to avoid having to go out and earn some.

If asked, Carl would probably say no to coming out here to live with us, even though it might be the very best thing for him. He should never feel like he has been "dumped" on anyone. I think he would have a lot more stimulation out here. He does love the Bay Area and after a short time he might gain some real incentive to get well.

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>

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Sent: Fri, March 18, 2011 8:59:24 AM
Subject: atty for guardianship

Ok, I think I may have found an atty who could handle the guardianship issue. She was recommended to me by the Burgower firm that Amy's lawyer had given her - the Burgower firm does not do guardianship cases. This atty's name is Ellen Yarrell; her offices are in the Galleria area; she charges an initial consult fee of $350 for 1 hr of her time, and probably requires an retainer of $2000. Her paralegal (Elizabeth) said that she's handled cases like this before (where an impaired person has been divorced by their spouse). I asked about the expense and she said that Yarrell could give us a better idea after the consult and it depends on whether the guardianship would be contested (so that depends on whether we fight Drina now, or wait to see if she'll divorce him and then we're facing Marta (if she pursues it)). I got the feeling that "expensive" meant more like $50,000 not $1 million.

I thought of another plus on our side if Drina divorces him - Drina will probably expect him to come live w/ mother - so if he's w/ us and not his daughter that lends more credence to our side for guardianship (possession is 9/10's of the law?).

I also talked to mom last night and told her what was going on. I asked her if she was ok w/ using her money to pay for Carl's legal fees and of course she said yes.

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08/12/2015 10:20:P0249

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Friday, March 18, 2011 8:41 AM
To: Anita Brunsting; Amy Tschirhart; Candace Curtis
Subject: Re: guardianship assessment form

They are there right now according to the PI. And Michael took him on Wednesday.

--- On **Fri, 3/18/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: guardianship assessment form
To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
Date: Friday, March 18, 2011, 10:33 AM

Do you know if he went to therapy at all this week?

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Carole Brunsting <cbrunsting@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Fri, March 18, 2011 8:26:05 AM
Subject: RE: guardianship assessment form

we're continuing the pi over the weekend or unless it looks like she's headed toward Beaumont - will also use him through next week. $750 is for the lawyer's (Cole) initial consult not a dr. If she divorces him then someone needs to sue for guardianship - Marta would be considered next in line by the law, but if she doesn't sue for it then I don't think she'd be considered. If Drina gets him to sign divorce papers that give him any less than 50% of their assets then a guardian can countersue her to recover those.

From: Candace Curtis [mailto:occurtis@sbcglobal.net]
Sent: Friday, March 18, 2011 10:20 AM
To: Anita Brunsting; Carole Brunsting; Amy Tschirhart
Subject: Re: guardianship assessment form

$750 an hour FOR WHAT? The woman is abusing him and negligent in his care. Have they been out even one time this week? Last I heard, Monday and Tuesday there was no activity other than a visit from Marta. APS said that once they confirmed she was following doctor's orders, they closed the case. If the instructions were 3 times a week and he hasn't been, or only goes once or twice, SHE IS NEGLIGENT, and they better reopen it or start a new one. Let me know if you want me to call.

Any doctor who has seen Carl would most likely say NO to all of the questions. I would, just based on past phone conversations with Carl.

What if Drina files for divorce? Would that be abandonment? Would the trust even be an issue if SHE divorces him?

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If I could have anything I wanted for Carl, I would have him assessed by the neuropsychologists at the place I found in Houston. I don't know if he could handle long periods of testing, but he has got to get some cognitive brain function back OR HE WILL NEVER EVEN BECOME CLOSE TO WHOLE AGAIN. It's a good sign that his behavior has improved, but is it because she beats him with a stick and mentally assaults him to get him to act right?

Maybe guardianship is the wrong approach. Maybe we should go after Drina and have her declared incompetent to care for him, or criminally negligent for not obtaining proper rehabilitation. There has to be a reason why she doesn't want her husband of almost 30 years to recover.

Let me know if he will be staying at Mother's again over the weekend. If so, we might want to extend the PI over the weekend so we can see what the hell she does. The more "evidence" we can amass, the better.

Love you guys,

C

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Thu, March 17, 2011 2:18:05 PM
Subject: guardianship assessment form

Just thought you'd find this interesting, this is the form that we'd have to have a physician use to assess Carl and possible a MHMR psychologist as well. I just thought it would give you an idea as to what they're looking for - Carl definitely fits the bill -

Just fyi, you may have already known this.

Anita

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S
CERTIFICATE OF INTERESTED PARTIES

Defendant Jill Willard Young, files this certificate of interested parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

1. Plaintiff Candace Louise Curtis, pro se
   218 Landana Street
   American Canyon, CA 94503
   925-759-9020
   occurtis@sbcglobal.net

2. Plaintiff Rik Wayne Munson, pro se
   218 Landana Street
   American Canyon, CA 94503
   925-349-8348
   blowintough@att.net

3. Defendant Jill Willard Young
   c/o Robert S. Harrell
   Rafe A. Schaefer
   Norton Rose Fulbright US LLP
   1301 McKinney St., Suite 5100
   Houston, Texas 77010
   robert.harrell@nortonrosefulbright.com
   rafe.schaefer@nortonrosefulbright.com

4. Defendant Candace Kunz-Freed
   c/o Cory S Reed

Thompson Coe Cousins Irons
One Riverway, Suite 1600
Houston, TX 77056
713-403-8213
creed@thompsoncoe.com

5. Defendant Albert Vacek, Jr.
c/o Cory S Reed
Thompson Coe Cousins Irons
One Riverway, Suite 1600
Houston, TX 77056
713-403-8213
creed@thompsoncoe.com

6. Defendant Bernard Lyle Matthews
2000 S. Dairy Ashford Rd, Suite 520
Houston, Texas 77077

7. Defendant Anita Kay Brunsting, pro se
203 Bloomingdale Circle
Victoria, TX 77904

8. Defendant Amy Ruth Brunsting, pro se
2582 Country Ledge Drive
New Braunfels, TX 78132

9. Defendant Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

10. Defendant Bradley Featherston
Featherston Tran P.L.L.C.
20333 State Highway 249, Suite 200
Houston, Texas 77070

11. Defendant Stephen Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

12. Defendant Darlene Payne Smith
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Houston, Texas 77010

13. Defendant Jason Ostrom
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713-863-8891
jason@ostromsain.com

14. Defendant Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, TX 77079

15. Defendant Bobbie Bayless
Bayless Stokes
2931 Ferndale
Houston, TX 77098
713-522-2224
Fax: 713-522-2218
Email: bayless@baylessstokes.com

16. Defendant The Honorable Christine Riddle Butts
c/o Laura Beckman Hedge
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
713-274-5137
laura.hedge@cao.hctx.net

17. Defendant Clarinda Comstock
c/o Laura Beckman Hedge
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
713-274-5137
laura.hedge@cao.hctx.net

18. Defendant Toni Biamonte
c/o Laura Beckman Hedge
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
713-274-5137
laura.hedge@cao.hctx.net

Dated: October 6, 2016

Respectfully submitted,
/s/ Robert S. Harrell

Robert S. Harrell
Attorney-in-charge
State Bar No. 09041350
Federal ID No. 6690
robert.harrell@nortonrosefulbright.com
1301 McKinney, Suite 5100
Houston, TX 77010-3095
Telephone: (713) 651-5151
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OF COUNSEL:
Rafe A. Schaefer
State Bar No. 24077700
Federal ID No. 1743273
rafe.schaefer@nortonrosefulbright.com
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1301 McKinney, Suite 5100
Houston, TX 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246

ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Certificate of Interested Parties has been served on October 6, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	**Ä**	
	Ä	
VS.	**Ä**	
	Ä	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL*.	**Ä**	
	Ä	
	Ä	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S *UNOPPOSED* MOTION FOR LEAVE TO FILE MOTION TO DISMISS IN EXCESS OF PAGE LIMIT

Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte (collectively "Defendants"), hereby file the following Unopposed Motion for Leave to File Motion to Dismiss In Excess of Page Limit ("Motion").

Section B(5)(E) of Judge Alfred H. Bennett's Court Procedures limit the filing of documents such as Defendants' Motion to Dismiss to 20 pages without leave of Court. The Court Procedures further directs the parties to seek leave when their documents exceed the page limit. Defendants seek leave to file their Motion to Dismiss in excess of the page limit, because of the complexity of the facts and law relevant to this case, and the length of the claims asserted by Plaintiffs in their extensive 62-page, 217 paragraph Complaint, the complexity of the RICO case law relevant to this case, and the number of counts alleged against Defendants (Plaintiffs have asserted at least 16 of 47 claims against the Honorable Judges and Mr. Baiamonte).

Defendants have exercised best efforts to keep their Rule 12(b)(1) and (6) Motion to Dismiss as concise, and to the point, as possible. However, the Plaintiffs' RICO claims as currently plead are believed by Defendants, after reasonable inquiry into the relevant Supreme Court and Fifth Circuit Authority, to be so deficient (as to, *inter alia*, "RICO standing and proximate cause," "RICO standing and direct injury," "pattern," "enterprise," "conspiracy," and "predicate act nexus to direct injury"), that extensive briefing was required to adequately address the myriad pleading deficiencies requiring dismissal.

Defendants' Motion is 31 pages, *exclusive of* the certificate of service. Defendants pray the Court grant them leave to file their Motion to Dismiss. This Motion for Leave is unopposed by the Plaintiffs.

PRAYER

For the reasons set forth above, Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte respectfully request the Court grant their Motion for Leave to file Motion to Dismiss in Excess of Page Limits, and award these Defendants such other and further relief, at law or in equity, to which Defendants may show themselves to be justly entitled.

Dated: October 7, 2016.

Respectfully Submitted,

/s/ Laura Beckman Hedge
Laura Beckman Hedge
Assistant County Attorney
ATTORNEY-IN-CHARGE
Texas State Bar No. 00790288
Federal Bar No. 23243
laura.hedge@cao.hctx.net
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5137
Facsimile: (713) 755-8924

ATTORNEY FOR DEFENDANTS, JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE

OF COUNSEL:

VINCE RYAN,
HARRIS COUNTY ATTORNEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 7th day of October, 2016, via ECF.

Candace Louise Curtis
218 Landana Street
American Canyon, CA 94503

Jason Ostrom
Ostrom Sain LLP
5020 Montrose Blvd., Suite 310
Houston, Texas 77006

Rik Wayne Munson
218 Landana Street
American Canyon, CA 94503

Cory S. Reed
Thompson Coe Cousins Irons
One Riverway, Suite 1600
Houston, Texas 77056

Martin Samuel Schexnayder
Winget, Spadafora & Schwartzberg LLP
Two Riverway, Suite 725
Houston, TX 77056

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

Rafe A. Schaefer
Norton Rose Fulbright US LLP
1301 McKinney
Houston, TX 77010

Bobbie G. Bayless
Bayless Stokes
2931 Ferndale
Houston, TX 77098

Anita Brunsting
203 Bloomingdale Circle
Victoria, TX 77904

Amy Brunsting
2582 Country Ledge Drive
New Braunfels, TX 78132

/s/ Laura Beckman Hedge
Laura Beckman Hedge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

ORDER

The Court, having considered the Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte's Unopposed Motion for Leave to File Motion to Dismiss In Excess of Page Limit ("Motion"), finds the relief requested to be in order and therefore GRANTS the Motion.

It is so ORDERED.

_____ _____

Date

The Honorable Alfred H. Bennett
United States District Judge

United States Courts
Southern District of Texas
FILED

OCT 05 2016

David J. Bradley, Clerk of Court

Southern District of Texas, Texas
515 RUSK ST HOUSTON TX 77002

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE

Defendant

AFFIDAVIT OF SERVICE

I, **CHRISTOPHER G SAMPA**, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 08/25/16 5:09 pm, instructing for same to be delivered upon Young, Jill Willard.

That I delivered to : Young, Jill Willard.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES AND PRACTICES;CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 2900 Weslayan Ste 150
HOUSTON, Harris County, TX 77027

Manner of Delivery : by PERSONALLY delivering the document(s) to the person above.

Delivered on : AUG 26, 2016 11:10 am

My name is CHRISTOPHER G SAMPA, my date of birth is MAR 12th, 1965, and my address is Professional Civil Process Houston, 2626 South Loop West Ste 423, Houston TX 77054, and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 29 day of August, 2016.

CHRISTOPHER G SAMPA Declarant
953

Texas Certification#: SCH-1088 Exp. 08/31/17

Private Process Server
Professional Civil Process Of Texas, Inc
103 Vista View Trail Spicewood TX 78669
(512) 477-3500

PCP Inv#: H16800443
SO Inv#: A16803303
Reference : 4:16-CV-01969

AX02A16803303

+ Service Fee: 70.00
Witness Fee: .00
Mileage Fee: .00

tomcat

Curtis, Candace L

RETURN TO CLIENT

17-20360.2588

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Jill Willard Young
2900 Weslayan, Suite 150
Houston, TX 77027

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

17-20360.2589

Southern District of Texas, Texas
515 RUSK ST HOUSTON TX 77002

United States Courts
Southern District of Texas
FILED
OCT 05 2016
David J. Bradley, Clerk of Court

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY LESTER; ET AL

Defendant

AFFIDAVIT OF SERVICE

I, **DAVID STANFIELD**, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 08/25/16 12:23 pm, instructing for same to be delivered upon Brunsting, Anita Kay.

That I delivered to	: Brunsting, Anita Kay.
the following	: SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES AND PRACTICES;CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)
at this address	: 203 Bloomingdale Cir VICTORIA, Victoria County, TX 77904
Manner of Delivery	: by PERSONALLY delivering the document(s) to the person above.
Delivered on	: AUG 25, 2016 6:53 pm

My name is DAVID STANFIELD, my date of birth is 7-3-66, and my address is 103 Vista View Trl #103, Spicewood, TX 78669 and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.
Executed in VICTORIA County, State of Texas, on the 25th day of August, 2016.

DAVID STANFIELD Declarant
714

Texas Certification#: SCH-9704 Exp. 05/31/18

Private Process Server
Professional Civil Process Of Texas, Inc
103 Vista View Trail Spicewood TX 78669
(512) 477-3500

PCP Inv#: A16803284

Reference : 4:16-CV-01969

AX02A16803284

+ Service Fee:	70.00
Witness Fee:	.00
Mileage Fee:	.00

tomcat

Curtis, Candace L

RETURN TO CLIENT

17-20360.2590

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, TX 77904

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

Southern District of Texas, Texas
515 RUSK ST HOUSTON TX 77002

United States Courts
Southern District of Texas
FILED

OCT 05 2016

David J. Bradley, Clerk of Court

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

vs

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE

Defendant

AFFIDAVIT OF SERVICE

I, **LINDELL CHARLES**, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 08/26/16 9:16 pm, instructing for same to be delivered upon Lester, Gregory.

That I delivered to : Lester, Gregory.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES AND PRACTICES;CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 955 N Dairy Ashford Rd #220
HOUSTON, Harris County, TX 77079

Manner of Delivery : by PERSONALLY delivering the document(s) to the person above.

Delivered on : September 2, 2016 1:58 pm

My name is LINDELL CHARLES, my date of birth is August 22nd, 1971, and my address is Professional Civil Process Houston, 2626 South Loop West Ste 423, Houston TX 77054, and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 2 day of SEPTEMBER, 2016.

LINDELL CHARLES Declarant
928

Texas Certification#: SCH-324 Exp. 09/30/17

Private Process Server
Professional Civil Process Of Texas, Inc
103 Vista View Trail Spicewood TX 78669
(512) 477-3500

PCP Inv#: H16800438
SO Inv#: A16803293
Reference : 4:16-CV-01969

AX02A16803293

+ Service Fee: 70.00
Witness Fee: .00
Mileage Fee: .00

serverh

Curtis, Candace L

RETURN TO CLIENT

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, TX 77079

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

United States Courts
Southern District of Texas
FILED

OCT 05 2016

David J. Bradley, Clerk of Court

Southern District of Texas, Texas
515 RUSK ST HOUSTON TX 77002

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

VS

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY LESTER; ET AL

Defendant

AFFIDAVIT OF SERVICE

I, KIMBERLY BARTHOLOMEW, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 08/25/16 10:43 am, instructing for same to be delivered upon Brusting, Amy Ruth.

That I delivered to : Brusting, Amy Ruth.

the following : SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES AND PRACTICES;CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)

at this address : 2582 County Ledge
NEW BRAUNFELS, Comal County, TX 78132

Manner of Delivery : by PERSONALLY delivering the document(s) to the person above.

Delivered on : August 30, 2016 7:52 am

My name is KIMBERLY BARTHOLOMEW, my date of birth is December 27th, 1978, and my address is 103 Vista View Trl #103, Spicewood, TX 78669 and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.
Executed in CALDWELL County, State of Texas, on the 31st day of August, 2016.

KIMBERLY BARTHOLOMEW Declarant
2113

Texas Certification#: SCH-10964 Exp. 06/30/17

Private Process Server
Professional Civil Process Of Texas, Inc
103 Vista View Trail Spicewood TX 78669
(512) 477-3500

PCP Inv#: A16803289

Reference : 4:16-CV-01969

AX02A16803289

+ Service Fee: 70.00
Witness Fee: .00
Mileage Fee: .00

waultman

Curtis, Candace L

RETURN TO CLIENT

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, TX 78132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

Southern District of Texas, Texas
515 RUSK ST HOUSTON TX 77002

United States Courts
Southern District of Texas
FILED
OCT 05 2016
David J. Bradley, Clerk of Court

CASE #: 4:16-CV-01969

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON

Plaintiff

VS

CANDACE KUNZ-FREED; ALBERT VACEK JR; BERNARD LYLE MATHEWS III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A MENDEL; DARLENE

Defendant

AFFIDAVIT OF SERVICE

I, **LINDELL CHARLES**, make statement to the fact;
That I am a competent person more than 18 years of age or older and not a party to this action, nor interested in outcome of the suit. That I received the documents stated below on 08/26/16 9:17 pm, instructing for same to be delivered upon Mendel, Stephen A.

That I delivered to	:	Mendel, Stephen A.
the following	:	SUMMONS; VERIFIED COMPLAINT FOR DAMAGES; COURT PROCEDURES AND PRACTICES;CERTIFICATION OF SERVICE IN REMOVED ACTION; ORDER FOR CONFERENCE AND DISCLOSURE; NOTICE OF LAWSUIT (16)
at this address	:	1155 Dairy Asshford Ste 104 HOUSTON, Harris County, TX 77079
Manner of Delivery	:	by PERSONALLY delivering the document(s) to the person above.
Delivered on	:	September 2, 2016 2:10 pm

My name is LINDELL CHARLES, my date of birth is August 22nd, 1971, and my address is Professional Civil Process Houston, 2626 South Loop West Ste 423, Houston TX 77054, and U.S.A. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 9 day of September 20 16

LINDELL CHARLES Declarant
928

Texas Certification#: SCH-324 Exp. 09/30/17

Private Process Server
Professional Civil Process Of Texas, Inc
103 Vista View Trail Spicewood TX 78669
(512) 477-3500

PCP Inv#: H16800441
SO Inv#: A16803300
Reference : 4:16-CV-01969

AX02A16803300

+ Service Fee: 70.00
Witness Fee: .00
Mileage Fee: .00

serverh

Curtis, Candace L

RETURN TO CLIENT

17-20360.2596

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

17-20360.2597

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL*.	§	
	§	
	§	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) and (6)

Laura Beckman Hedge
Assistant County Attorney
ATTORNEY-IN-CHARGE
Texas State Bar No. 00790288
Federal Bar No. 23243
laura.hedge@cao.hctx.net
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5137
Facsimile: (713) 755-8924

ATTORNEY FOR DEFENDANTS, JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE

OF COUNSEL:

VINCE RYAN,
HARRIS COUNTY ATTORNEY

NATURE OF CASE, STATEMENT OF ISSUES AND SUMMARY OF ARGUMENT

Plaintiffs in this case are Candice Curtis, a disgruntled sibling in a probate case and Rik Munson, her alleged "domestic partner" and paralegal who claims to have assisted Curtis in her ongoing litigation against her siblings. Unhappy with the current state of the probate case, Plaintiffs have falsely alleged the Honorable Judges Christine Riddle Butts and Clarinda Comstock ("Honorable Judges") and substitute Court Reporter Tony Baiamonte (collectively, "Harris County Defendants") have engaged in a criminal and civil conspiracy with the opposing litigants and their attorneys, among others, to defraud and deprive them of the assets of Nelva Brunsting's estate and family trust.

The Harris County Defendants file this Motion to Dismiss the Plaintiffs' Verified Complaint for Damages [Doc. #1] pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6). This pleading fails to state a plausible and actionable claim against the Harris County Defendants and instead asserts numerous frivolous and wholly groundless claims which are unfounded, outrageous and sanctionable.

Plaintiffs allege the "multi-billion dollar Probate industry is an illicit wealth distribution empire run by morally bankrupt judges and attorneys". . . that is part of a "cancerous judicial black market plague" spread "throughout the state court systems" that have become "criminal racketeering enterprises."[1] Plaintiffs allege judges have become part of the "worst organized cartel of predatory criminals in the history of this nation."[2]

Turning their attention to the Harris County Defendants, Plaintiffs allege the "blatantly

[1] Complaint [Doc. 1], ÆE170, 193.
[2] *Id.*, at 172.

corrupt probate court and its officers" engaged in a conspiracy to "loot assets" and "exploit the elders of our society" to unjustly enrich the attorneys and other "legal professionals" in Harris County Probate Court No. 4 ("Probate Court 4"). [3] The predicate acts alleged against the Honorable Judges include the referral of the case to mediation to an "extortionist thug mediator,"[4] and the removal of Curtis' motion for summary judgment from the Court's docket pending mediation.[5] These predicate acts are alleged under various federal statutes, including 18 U.S.C. ÄÄ 242, 371, 1001, 1346, and 1951(b)(2), 42 U.S.C. ÄÄ1983, 1985, and TEX. PENAL CODE Ä31.02, 31.03, 32.21.[6]

Plaintiffs additionally allege that Tony Baiamonte[7], a contract court reporter that was hired to stenographically record a *single hearing* in the underlying probate proceeding, "knowingly and willfully spoilate[d], destroy[ed] or otherwise conceal[ed]" some unidentified "material evidence" in violation of 18 U.S.C. ÄÄ1512(c), 1512(k) and 1519.[8] Mr. Baiamonte has destroyed nothing and the conclusory allegation is undeniably frivolous. Plaintiffs assert a total of at least 15 separate claims against the Harris County Defendants.

Harris County Defendants are entitled to dismissal as a matter of law, because the claims

---

[3] *Id*. at ÆÆ77, 78, 79, 215.

[4] Although Plaintiffs do not identify who this mediator is, Judge Mark Davidson was the mediator chosen to recently mediate this case. Based on the Motions to Dismiss filed by Candace Kunz-Freed [Doc. 20, Æ16] and Stephen A. Mendel and Bradley E. Featherston [Doc. 36, ÆÆ2.5, 2.6], the mediation was cancelled and never took place.

[5] *Id*. at ÆÆ131, 132.

[6] It does not appear Plaintiffs are asserting claims against the Harris County Defendants for any other alleged predicate acts in the Complaint, Æ59, since most of these claims, i.e. illegal wiretapping, misapplication of fiduciary, suborning perjury, identity theft, etc., are spelled out in separate counts against other defendants and not the Harris County Defendants. To the extent pled against the Harris County Defendants, they are denied and lack any factual basis.

[7] Mr. Baiamonte was improperly sued as "Toni Biamonte."

[8] Doc. # 1, Æ143.

against the Honorable Judges are barred by judicial, official and governmental immunity. Likewise, the claims against Tony Baiamonte are barred by governmental, qualified and official immunity.

Harris County Defendants are entitled to dismissal on these additional grounds: (1) the Complaint fails to state a claim sufficient to meet the requirements of Rules 8 and 9(b), (2) the Complaint fails to state a RICO claim or RICO conspiracy claim against the Harris County Defendants, (3) the Complaint fails to allege standing under RICO, (4) the Complaint fails to allege a conspiracy, (5) the Complaint is not plausible, (6) the Complaint fails to plausibly allege the existence of an "enterprise" or "association-in-fact," and (7) the Complaint is frivolous.

Neither Curtis nor Munson have standing to bring this lawsuit. Munson is not a party to the underlying probate proceeding and has no "private attorney general" standing. Further, his complaints that he could have pursued other work but instead spent four years providing paralegal services to Curtis and therefore lost out on other "property and business interests" is not a basis for standing.

Harris County Defendants seek to dismiss all of Plaintiffs' claims because there is no subject matter jurisdiction over the Defendants, and alternatively, for their failure to state a claim upon which relief may be granted, pursuant to Rules 12(b)(6), 8(a) and 9(b) of the Federal Rules of Civil Procedure.

ARGUMENT & AUTHORITIES

1. The Court lacks subject matter jurisdiction.

FED. R. CIV. P. 12(b)(1) allows a party to move for dismissal of an action for lack of subject matter jurisdiction. Federal courts are courts of limited jurisdiction; absent jurisdiction conferred

by statute or the Constitution, they lack the power to adjudicate claims.[9] Subject matter jurisdiction cannot be established by waiver or consent.[10] If subject matter jurisdiction is lacking, the court must dismiss the suit.[11]

When a plaintiff lacks standing, the court lacks subject matter jurisdiction.[12] "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III."[13] The constitutional requirements to establish standing are (1) injury in fact that is concrete, particularized, and actual or imminent, not hypothetical; (2) a fairly traceable causal link between the plaintiff's injury and the defendant's challenged actions; and the likelihood of redressability by the requested relief.[14] The Eleventh Amendment and sovereign immunity also restrict federal court jurisdiction.[15] "The Eleventh Amendment bars an individual from suing a state in federal court unless the state consents or Congress has clearly and validly abrogated the state's sovereign immunity."[16] A suit against a state agency or department is considered to be a suit against the state under the Eleventh Amendment.[17] In addition, the Eleventh Amendment bars suit against a state official when "'the state is the real substantial party in interest.'"[18]

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[9] *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994).
[10] *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 919 (5th Cir.), *cert. denied*, 534 U.S. 993, 122 S.Ct. 459, 151 L.Ed.2d 377 (2001).
[11] *Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir.1998).
[12] *Cadle Co. v. Neubauer*, 562 F.3d 369, 371 (5th Cir.2009).
[13] *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).
[14] *Lujan*, 504 U.S. at 560–61; *Little v. KPMG LLP*, 575 F.3d 533, 520 (5th Cir.2009).
[15] *Vogt v. Board of Commissioners of the Orleans Levee Dist.*, 294 F.2d 684, 688 (5th Cir.), *cert. denied*, 537 U.S. 1088 (2002).
[16] *Fairley v. Louisiana State*, 254 Fed. Appx. 275, 276–77 (5th Cir. Sept.11, 2007), *citing* U.S. Const. Amend. XI, and *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999).
[17] *Id.*
[18] *Id., citing Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

"When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits."[19]

The Court lacks jurisdiction because the Plaintiffs have no standing to assert RICO claims and because the Defendants are entitled to immunity from suit.

a. Plaintiffs fail to allege standing under RICO[20]

Plaintiffs must plead and prove that they have legal standing to sue for an alleged RICO violation. The standing provision of civil RICO provides that "any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor ... and shall recover threefold the damages he sustains"[21] To have standing under the RICO Act, a plaintiff must allege a tangible financial loss.[22] Injury to mere expectancy interests or to an intangible property interest is not sufficient to confer RICO standing.[23] Thus, speculative damages are not compensable under RICO.[24]

Additionally, a plaintiff may sue under § 1964(c) (civil RICO) only if the alleged RICO violations ("predicate acts") were the proximate cause of the plaintiff's injury.[25] In *Holmes v.*

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[19] *Randall D. Wolcott, MD, PA v. Sebelius*, —— F.3d ——, No. 10–10290, 635 F.3d 757, 2011 WL 870724, *4 (5th Cir. Mar.15, 2011), *citing Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001). Fed.R.Civ.P. 12(h)(3).

[20] To state a civil RICO claim under § 1962, a plaintiff must allege: (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989) (citing *Sedima, S.P.R.L. v. Imrex Co., Inc*., 473 U.S. 479, 496 (1985).

[21] *In re Taxable Mun. Bond Sec. Litig. v. Kutak*, 51 F.3d 518, 521 (5th Cir.1995) (quoting 18 U.S.C. § 1964(c)).

[22] *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998).

[23] *Id.*

[24] *In re Taxable Mun. Bond Secs. Litig.*, 51 F.3d 518, 523 (5th Cir. 1995).

[25] *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U. S. 258, 268 (1992)

Securities Investor Protection Corp., the Supreme Court held that the proximate-cause requirement necessitates the "demand for *some direct relation between the injury asserted and the injurious conduct alleged*."[26]

Thus, a RICO plaintiff must satisfy two elements to establish standing to bring a RICO claim: (1) a direct, concrete financial injury to Plaintiff's business or property; and (2) proximate causation (i.e., that the alleged injury was proximately caused by the alleged RICO predicate act(s)). The Plaintiffs herein have neither alleged nor proven that they have suffered any *direct*, personal, concrete financial injury to their business or property. Rather, Plaintiff Curtis has alleged *only indirect injury* -i.e., alleged loss to the *assets of the Brunsting family trust and estate in the underlying probate proceeding.* "[T]he plaintiff only has standing *if, and can only recover to the extent that*, he has been injured in his business or property by the conduct constituting the violation."[27] (Emphasis added). Even Curtis acknowledges there are only "threats of injury to property rights" of which she only has an "expectancy interest."[28]

Plaintiff Munson is even further removed as he *admittedly* has no interest in the Brunsting family trust and estate and was not a party to any prior lawsuits involving the subject trust and estate.[29] His only connection to the prior lawsuits was the "paralegal services" he provided to Curtis.

i. No proximate cause.

Plaintiffs have littered their Complaint with unsubstantiated allegations that Harris County

[26] *Id.*, at 268 [Emphasis added]; *See also*, *Anza v. Ideal Steel Supply Corp.*, 547 US 451, 457 (2006).
[27] *Sedima*, 473 U.S. at 496 (emphasis added).
[28] Doc. 1, ¶¶ 163, 165, 213.
[29] See Doc. 33, ¶ 69.

Defendants have committed *unspecified* acts of honest services fraud, fraud, theft, mail fraud,[30]wire fraud,[31] obstruction of justice[32], spoliation of evidence[33] and interference with commerce or extortion[34]. It appears the complaints concerning mail fraud and wire fraud is limited to the other defendants – such as the exchange of discovery responses – which does not involve the Harris County Defendants.[35]

To satisfy the stringent pleading requirements of Rule 9(b) regarding claims sounding in fraud, "the plaintiff must specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent."[36] Plaintiffs must set out ***"the who, what, when, where, and how"*** of the fraud.[37]

Plaintiffs' Complaint, despite its corpulence (59 pages and 217 paragraphs), wholly fails to plead "the who, what, when, where, and how" of the alleged fraud as required by Rule 9(b). This particularity requirement also applies to the pleading of mail fraud or wire fraud as predicate acts in a RICO claim.[38]

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[30] See 18 U. S. C. § 1341.
[31] See 18 U. S. C. § 1343.
[32] See 18 U. S. C. § 1503.
[33] See 18 U. S. C. § 1512.
[34] See 18 U. S. C. § 1951.
[35] See Doc. 1, ¶¶ 127, 135 – 141.
[36] *See Sullivan*, 600 F.3d at 551
[37] *See Benchmark Elecs. v. J.M. Huber Corp.*, 343 F.3d 719, 724 (5th Cir. 2003)(emphasis added); *See also, Dawson v. Bank of America, NA*, No. 14-20560, Summary Calendar (5th Cir. Mar. 13, 2015). *See also Carroll v. Fort James Corp*., 470 F.3d 1171, 1174 (5th Cir. 2005) (citing *Williams v. Bell Helicopter Textron, Inc.*, 417 F.3d 450, 453 (5th Cir. 2005) (quoting *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997)).
[38]*See Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F. 2d 1134, 1138-9 (5th Cir. 1992), citing *Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 430 (5th Cir.), cert. denied, ___ U.S. ___, 111 S.Ct. 244, 112 L.Ed.2d 203 (1990); *See, also, Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989).

Having failed to plead any facts in support of the conclusory allegations of racketeering activity based upon fraud, Plaintiffs have failed to plead and prove proximate causation as a required element of RICO standing.[39]

Likewise, Plaintiffs' "factual allegations" of proximate cause are scant to non-existent. The Complaint contains their proximate cause allegations, which are nothing but conclusory recitations, wholly devoid of the heightened level of factual pleading for fraud cases mandated by Rule 9(b) and federal law.

Dismissal for failure to plead allegations of fraud, including RICO predicate acts of alleged mail fraud and wire fraud with particularity as required by Rule 9(b), is treated the same as Rule 12(b)(6) dismissal for failure to state a claim.[40] The Fifth Circuit interprets Rule 9(b) to require "specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statement were made, and an explanation of why they were fraudulent."[41]

Further, it is clear from the Complaint that Plaintiffs have not alleged any unlawful act against the County Defendants. Plaintiffs have listed 6 federal crimes that appear in 18 U.S.C. § 1961(1)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simply list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead facts that, if true, would establish that each predicate act was in fact committed by the County Defendants.[42]

Plaintiff's Complaint fails to meet this standard. For the identified predicate acts, Plaintiffs

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[39] *Id.; See also, Holmes* at 268.
[40] *See Lovelace v Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996).
[41] *See Plotkin v. IP Axess, Inc.*, 407 F.3d 690, 696 (5th Cir. 2005).
[42] *Elliott*, 867 F.2d at 880.

simply identify the statute, provide a general description of the conduct it prohibits (although for most the conduct is not even described), and then assert the County Defendants violated the statute. This is not sufficient to establish (1) a predicate act was committed, or (2) any damages were proximately caused by the alleged act.

In addition, Plaintiffs cite to various other purported predicate acts as a basis for RICO, but this fails too because only predicate acts of *racketeering activity* provide a basis for recovery under RICO section 1964(c).[43] The following generalized claims are not predicate acts that support a claim for racketeering activity: theft under the Texas Penal Code (Claim 12), conspiracy for "state law theft" and "aiding and abetting" (Claim 23), spoliation (Claim 38), conspiracy to violate constitutional rights (Claim 44), "aiding and abetting breach of fiduciary, defalcation and scienter" (Claim 45), "aiding and abetting misapplication of fiduciary, defalcation and scienter" (Claim 46) and "tortious interference with inheritance expectancy" (Claim 47). Further, Plaintiff's conclusory statements concerning these claims cannot support a claim against the Harris County Defendants.

ii. No direct injury.

Plaintiffs also lack RICO standing because they have failed to plead the "direct injury" ("directness") requirement.[44]

A justiciable interest is required as an element of standing under Texas law.[45] As noted by the Supreme Court, "There is no need to broaden the universe of actionable harms to permit RICO

[43] *Brandenburg v. Seidel*, 859 F.2d at 1179, 1188 (4th Cir. 1988).
[44] *See Holmes*, at 268.
[45] See also TEX. CIV. P. & REM CODE ANN. §§ 134.001-.005 (West 2011 & Supp. 2013) (Theft Liability Act); TEX. CIV. P. & REM CODE ANN. § 31.03(a) (West Supp. 2013) (claim under the Theft Liability Act requires ownership interest in the property unlawfully appropriated).

suits *by parties who have been injured only indirectly*."[46]

The Plaintiffs have failed to adequately allege *direct (i.e., personal)* concrete financial loss, as required to establish standing to sue for civil RICO or civil RICO conspiracy.[47] Rather, they have made myriad conclusory, unsubstantiated claims. Curtis acknowledges there are only "threats of injury to property rights" of which she only has an "expectancy interest."[48] Munson has *no* such interest at all.

Because Plaintiffs have wholly failed to plead standing to bring their RICO claims (i.e., the existence of a *direct* injury to their personal business or property, which was proximately caused by a predicate act, this motion should be granted and their RICO claims dismissed with prejudice.

b. The Honorable Judges are entitled to judicial immunity.

Plaintiffs attempt to argue around judicial immunity by asserting the Honorable Judges were engaged in "non-judicial acts."[49] Despite the exceptionally lengthy Complaint, the sum and substance of *all* allegations against the Honorable Judges is the Plaintiffs' belief that the actions taken by them during the course of the pending cases were improper and/or wrong. Indeed, the acts complained of are removing a motion for summary judgment from the hearing docket and ordering the parties to mediation.

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[46] *See Anza v. Ideal Steel Supply Corp.*, 547 US 451, 460 (2006) (emphasis added).
[47] "[T]o demonstrate injury for RICO purposes, plaintiffs must show proof of concrete financial loss." *Chaset v. Fleer/Skybox Intern, LP*, 300 F.3d 1083, 1086-87 (9th Cir. 2002); *Regions Bank v. J.R. Oil Co.*, 387 F.3d 721, 728-29 (8th Cir.2004) (same); see also *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 492 n. 16 (5th Cir.2003) (A plaintiff lacks RICO standing "unless he can show concrete financial loss").
[48] Doc. 1, ¶¶ 163, 165, 213.
[49] Doc. 1, ¶¶ 18, 19.

It is unquestionably clear that these actions were judicial acts that were made within Probate Court 4's jurisdiction and for which the Honorable Judges are entitled to immunity. The Complaint is completely void of any facts alleging actions taken in a nonjudicial role.

The Honorable Judges are entitled to absolute judicial immunity from suit for acts undertaken in their judicial capacity even if they are done maliciously or corruptly (which Defendants emphatically deny).[50] The two exceptions to this doctrine, i.e., actions by the judge in a non-judicial role and actions, while judicial actions, taken in complete absence of jurisdiction, do not apply here as Plaintiffs have not alleged facts that would invoke either.[51] Further, as Texas judges, the Honorable Judges are entitled to Eleventh Amendment protection and governmental immunity for claims against them in their official capacity.[52] Absolute judicial immunity does not bar prospective relief against a judge, but Plaintiffs have not sought such relief against the Honorable Judges.[53]

In a similar case, Houston's First Court of Appeals affirmed the trial court's finding that two probate judges were entitled to judicial immunity. In *James v. Underwood*, two siblings were involved in a legal dispute over who had the right to manage their mother's assets.[54] Their controversy spawned multiple lawsuits filed in various district and probate courts, resulting in no less than 11 appellate decisions.[55] James sued two judges (Judge Olen Underwood and Judge

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[50] *Price v. Porter*, 351 Fed. Appx. 925, 927 (5th Cir.2009), *citing Mireles v. Waco*, 502 U.S. at 10, and *Stump v. Sparkman*, 435 U.S. at 355–57.
[51] *Id.*
[52] *Holloway v. Walker*, 765 F.2d 517, 519 (5th Cir.), *cert. denied*, 474 U.S. 1037, 106 S.Ct. 605, 88 L.Ed.2d 583 (1985).
[53] *Bauer v. State of Texas*, 341 F.3d 352, 357 (5th Cir.2003).
[54] *James v. Underwood*, 438 S.W.3d 704, 706-07 (Tex. App.—Houston [1st Dist.] 2014, no pet.).
[55] *Id*. at 707.

Patrick Sebesta) who had presided over aspects of her on-going legal dispute with her sibling and an intervenor.[56] The judges filed a motion to dismiss on the basis of judicial and sovereign immunity and the motion was granted.[57] The First Court of Appeals concluded the dismissal based on judicial immunity was proper and therefore did not reach the issue of sovereign immunity.[58] The Court noted that immunity from suit "deprives a trial court of subject-matter jurisdiction."[59] "The Supreme Court has stated repeatedly that 'it is a general principal of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself."[60]

In a suit alleging RICO violations, the Fifth Circuit determined that three state court judges and a court secretary were entitled to absolute judicial immunity and quasi-judicial immunity, respectively.[61] The plaintiffs sued twenty individual and corporate defendants, alleging a law firm engaged in a criminal conspiracy with the other defendants to infiltrate and to control the state and federal court systems in Texas.[62] As predicate acts to the RICO violation, the plaintiffs alleged illegal campaign contributions, bribery, mail and wire fraud, and obstruction of justice.[63] The Fifth Circuit rejected as frivolous the plaintiffs' argument that there is no absolute judicial

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[56] *Id*.
[57] *Id*. at 709.
[58] *Id*.
[59] *Id*., citing *Reata Constr. Corp v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006).
[60] *Id*., citing *Bradley v. Fisher*, 80 U.S. 335, 347, 13 Wall. 335, 20 L.Ed. 646 (1871), *Mireles v. Waco*, 502 U.S. at 10, *Stump v. Sparkman*, 435 U.S. at 355.
[61] *Kirkendall v. Grambling & Mounce, Inc*., 4 F.3d 989, 1993 WL 360732, *2 (5th Cir. 1993).
[62] *Id*., *1.
[63] *Id*.

immunity and quasi-judicial immunity in RICO actions.[64]

Judicial immunity provides immunity from suit, not just from the ultimate assessment of damages.[65] "Judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction."[66] To determine whether an act is "judicial", the courts look at the following four factors: (1) the act complained of is one normally performed by a judge, (2) the act occurred in the courtroom or an appropriate adjunct such as the judge's chambers, (3) the controversy centered around a case pending before the judge, and (4) the act arose out of an exchange with the judge in the judge's official capacity.[67] These factors are construed broadly in favor of immunity.[68] And, not all factors must be met for immunity to exist – in some circumstances, immunity may exist even if only one factor is met.[69] The factors are not required to be given equal weight; rather they are weighted according to the facts of the particular case.[70]

In considering whether the act complained of is normally performed by a judge, we ask whether the action is a "function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity."[71] The relevant inquiry is

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[64] *Id*., at *3.
[65] *James at 709* (citations omitted).
[66] *Id*., quoting *Alpert v. Gerstner*, 232 S.W.3d 117, 127 (Tex. App.—Houston [1st Dist.] 2006, pet. denied)(quoting *City of Houston v. W. Capital Fin. Servs. Corp*., 961 S.W.2d 687, 689 (Tex. App.—Houston [1st dist.] 1998, pet. dism'd w.o.j.)).
[67] *Id*., at 710, citing *Bradt v. West*, 892 S.W.2d 56 67 (Tex. App.—Houston [1st Dist.] 1994, writ denied); *see also Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993).
[68] *Id*., citing *Bradt*, at 67.
[69] *Id*. (citation omitted).
[70] *Id*., citing *Bradt* at 67.
[71] *Id*., citing *Mireles*, 502 U.S. at 11; *Twilligear v. Carrell*, 148 S.W.3d 502, 504 (Tex. App.—Houston [14th Dist.] 2004, pet. denied).

the "nature" and "function" of the act, not the "act" itself.[72] This distinction is necessary, otherwise any act characterized as improper would be deemed nonjudicial because "an improper or erroneous act cannot be said to be normally performed by a judge."[73]

In *Twilligear*, the Fourteenth Court of Appeals concluded that a judge accused of "negligence and gross negligence in failing to adequately oversee expenditures from a guardianship account" was exercising judicial action.[74] In the instant case, the Plaintiffs accuse the Honorable Judges of "obstruction of justice" by "removing Summary Judgment Motions from Calendar and creating stasis", and conspiring to "redirect civil litigation away from the public record to a staged mediation" for the purpose of "adding delay and increasing expense" and "holding the money cow trust hostage for attorney fee ransoms."[75] The actions Plaintiffs complain of are the rulings and Orders issued by the Honorable Judges.[76] The act of holding hearings and issuing rulings and Orders are all functions normally performed by a judge. This satisfies the first element of whether the actions were "judicial acts." The complained of actions occurred in court or in the course of handling their docket; therefore the second factor also supports a finding that the Honorable Judges' actions were judicial in nature.[77]

The third factor is whether the controversy centered around a case pending before the judge. The entirety of the allegations raised center around the underlying probate proceeding

[72] *Id*., citing *Mireles*, 502 U.S. at 13, *Stump*, 435 U.S. at 362.
[73] *Id*., citing *Mireles*, 502 U.S. at 12.
[74] *Id*., citing *Twilligear*, 148 S.W.3d at 505.
[75] Doc. 1, ¶¶ 121, 131.
[76] *Id*.
[77] *James*, at 711, citing *Bradt*, 892 S.W.2d at 67. *See also* the Complaint.

before the Honorable Judges. Accordingly, this factor supports the conclusion that the Honorable Judges' actions were judicial.[78]

The final factor is whether the act arose out of an exchange with the judge in the judge's official capacity.[79] Plaintiff Curtis, both pro se and through her former counsel, Jason Ostrom (who is also a named defendant in this lawsuit), appeared before the Honorable Judges and interacted with them in the judges' judicial capacities and not in any alternative capacities. The Honorable Judges acted in a judicial capacity in doing so, whether their rulings or decisions were correct or not (Defendants *emphatically* contend they were correct). Accordingly, this last factor supports the conclusion that the Honorable Judges' actions were judicial.

The next inquiry is whether the judges acted in a "complete absence of all jurisdiction."[80] "Where a court has some subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes."[81] The First Court of Appeals determined probate judges have jurisdiction to preside over probate cases, which is what Judge Sebesta had been doing at the point when his actions became "actionable" in the plaintiff's view.[82] Importantly, immunity is not lost based on an allegation that the action taken had procedural errors, even "grave" ones. *Id*., citing *Bradt*, at 68 (holding that judge had jurisdiction, for judicial immunity purposes, to sign order even if that order would be determined void because motion to recuse judge was pending). *See also In re J. B.H*., No. 14-05-00745-CV, 2006 WL 2254130, *2 (Tex. App.—Houston [14th Dist.] Aug. 8, 2006, pet.

[78] *Id*. at 711.
[79] *Id*.
[80] *Id*., citing *Mireles*, 502 U.S. at 12; *Bradt*, 892 S.W.2d at 68.
[81] *Id*., at 712, quoting *Malina*, 994 F.2d at 1125.
[82] *Id*.

denied)(mem.op.) (affirming dismissal of claims against judge who had judicial immunity regarding order in guardianship proceeding).

The Honorable Judges had the necessary jurisdiction to take the actions they did. Because the actions complained of by Plaintiffs are judicial in nature and because they were made within the Honorable Judges' jurisdiction, they are entitled to absolute judicial immunity on all claims brought against them.

c. Tony Baiamonte is entitled to official immunity.

To the extent Plaintiffs are asserting claims against Tony Baiamonte in his official capacity (which it appears is the case since he is only referred to in his capacity as the "Official Court Reporter"), such a claim is construed as a claim against Harris County. *See Hafer v. Melo,* 502 U.S. 21, 25 (1991) ("Suits against state officials in their official capacity therefore should be treated as suits against the State."); *see also Bennett v. Pippin,* 74 F.3d 578, 584 (5th Cir.1996) ("When a plaintiff sues a county or municipal official in her official capacity, the county or municipality is liable for the resulting judgment and, accordingly, may control the litigation on behalf of the officer in her official capacity. A suit against the Sheriff in his official capacity is a suit against the County."). Harris County (and therefore Tony Baiamonte) cannot be liable under RICO for two independent reasons: (1) it is incapable of forming the *mens rea* required for the underlying criminal act, and (2) because RICO is punitive in nature, municipal entities enjoy common law immunity from the punitive damages.[83]

d. Harris County Defendants are entitled to qualified immunity.

[83] *Gil Ramirez Group, L.L.C. v. Houston Independent School Dist*., 786 F.3d 400, 412 (5th Cir. 2015).

The doctrine of qualified immunity shields public officials acting within the scope of their authority from civil liability.[84] "The threshold inquiry a court must undertake in a qualified immunity analysis is whether plaintiff's allegations, if true, establish a constitutional violation."[85] Plaintiffs have not presented any facts to support a constitutional violation.

In *Bagby v. King*, a litigant filed suit against two federal judges, a federal district clerk, and an appeals court clerk claiming he had been denied access to various federal district and appellate courts in California.[86] The Magistrate Judge issued a Show Cause Order explaining that the plaintiff's claims failed to overcome the doctrines of absolute judicial immunity and qualified immunity and directed plaintiff to amend his complaint to cure these defects.[87] Instead, the plaintiff filed a host of new lawsuits against a number of federal judicial officers and court staff, complaining cryptically about their handling and disposition of prior lawsuits plaintiff had filed or attempted to file.[88] The court determined the plaintiff's claims extended no further than complaints about the dispositions of previous lawsuits.[89] The court held the plaintiff's purported claims were barred by either judicial immunity, qualified immunity, or failed to state a non-frivolous claim.[90]

In the instant case, the Plaintiffs have likewise complained about actions taken by the Honorable Judges in their handling of the probate matter and appear to complain about actions taken by Tony Baiamonte acting as the Official Court Reporter. Plaintiffs contend Mr. Baiamonte

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[84] *Bilbrew v. Corona*, No. H-04-2075, 2005 WL 1515409 *2 (S.D. Tex., June 27, 2005) (J. Hittner), citing *Harlow v. Fitzgerald*, 457 U.S. 800, 815-19, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).
[85] *Id*., quoting *Hope v. Pelzer*, 536 U.S. 730, 736, 122 S.Ct. 2508, 153 L.Ed.2d 666 (2002).
[86] *Bagby v. King*, No. SA-14-CA0682-XR, 2014 WL 4692479 *1 (W.D. Tex. Sept. 18, 2014).
[87] *Id*. at *2.
[88] *Id*.
[89] *Id*.
[90] *Id*.

"knowingly and willfully" spoliated, destroyed or otherwise concealed some unidentified "material evidence of a racketeering conspiracy."[91] These cryptic, conclusory complaints of all Harris County Defendants are not sufficient to identify a violation of any constitutional rights. Defendants are therefore entitled to qualified immunity and the case against them must be dismissed.

2. Plaintiffs have failed to state a claim against the Harris County Defendants.

Rule 12(b)(6) mandates dismissal when a plaintiff fails to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). A complaint that fails to satisfy the pleading requirements of Rule 8(a) or Rule 9(b) is subject to dismissal under Rule 12(b)(6).[92] To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face."[93]

A complaint must also "provide the plaintiff's grounds for entitlement to relief including factual allegations that when assumed to be true 'raise a right to relief above the speculative level.'"[94] "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."[95] "Nor does a complaint suffice if it tenders 'naked assertion[s],' devoid of 'further factual enhancement.'"[96]

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[91] Complaint, ¶ 143.
[92] *See Ashcroft v. Iqbal*, 556 U.S. 662, 677-79 (2009) (Rule 8(a)); *Lovelace v. Software Spectrum, Inc.*, 78 F.3d 1015, 1017 (5th Cir. 1996) (Rule 9(b)).
[93] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).
[94] *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555-566).
[95] *Iqbal*, 556 U.S. at 678.
[96] *Id.* (quoting, 550 U.S. at 557).

Plaintiff alleges a RICO claim under § 1962(c) and (d). To state a claim under any subsection, "a plaintiff must plead specific facts ... which establish the existence of an enterprise."[97] Plaintiffs have not pled facts that show or create a reasonable inference of a pattern of racketeering activity or the existence of any enterprise.

a. Plaintiffs fail to allege conspiracy.

In their rambling and disjointed Complaint, Plaintiffs allege the following regarding an alleged RICO conspiracy:

> The Harris County Defendants and the other Defendants "did at various times unlawfully, willfully and knowingly combine, conspire and agree with each other to violate 18 U.S.C. Sections 1962(c), by participating, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity involving multiple predicate acts within the meaning of 18 U.S.C. § 1961(1) in violation of 18 U.S.C. § 1962(c) and (d)" (Complaint, ¶59)
>
> * * *
>
> "It was part of the racketeering conspiracy that through the use of estate plan instruments Defendants, acting in concert both individually and severally, would and did intercept assets intended for the heirs of estates that pass through Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce." (Complaint, ¶ 66)
>
> * * *
>
> "It was part of the racketeering conspiracy that through the use of trust instruments Defendants, acting in concert both individually and severally, would and did intercept assets intended for the beneficiaries of trusts that pass through Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce." (Complaint, ¶ 67)

Beyond this ***conclusory*** language, the Complaint contains no further factual enhancement regarding the alleged conspiracy. "[A] conclusory allegation of agreement at some unidentified

[97] *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir.1989); *accord State Farm Mut. Auto. Ins. Co. v. Giventer*, 212 F.Supp.2d 639, 649–50 (N.D.Tex.2002).

point does not supply facts adequate to show illegality."[98] Because Plaintiffs allege no pattern of activity or the acquisition, establishment, conduct, or control of any enterprise as required under RICO, Plaintiffs have failed to state a RICO claim upon which relief may be granted.

Furthermore, civil conspiracy is a *derivative* tort; therefore, liability for a civil conspiracy depends on participation in an underlying tort.[99] Because the core of a RICO civil conspiracy is ***an agreement to commit predicate acts***, a RICO civil conspiracy complaint, at the very least, must allege *specifically* such an agreement.[100] Plaintiffs have wholly failed to allege a *specific agreement* among Defendants to commit the RICO predicate acts alleged. **There are no allegations that Judge Butts, Judge Comstock or Tony Baiamonte was a party to or principal in any such agreement.**

The Plaintiffs have pled **no facts** which would support even the existence of any conspiracy. As such, Plaintiffs have failed to establish that there is any plausibility to their conclusory allegations of conspiracy.[101]

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[98] *See Spectrum Stores Inc. v. Citgo Petroleum Corp*.,632 F.3d 938, 948 (5th. Cir., 2011), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

[99] *Homoki v. Conversion Servs., Inc.*, 717 F.3d 388, 402(5th. Cir., 2013), citing *Allstate Ins. Co. v. Receivable Fin. Co., L.L.C.*, 501 F.3d 398, 414 (5th Cir. 2007) (citations omitted). In order to adequately plead a claim for civil conspiracy, a plaintiff must adequately plead the underlying tort. *Id.*, citing *Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 649 (5th Cir. 2007) ("If a plaintiff fails to state a separate claim on which the court may grant relief, then the claim for civil conspiracy necessarily fails.")

[100] *See Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F.2d 1134, 1140-1 (5th Cir. 1992)(Where complaints fail to plead specifically any agreement to commit predicate acts of racketeering, the RICO conspiracy claim was also properly dismissed.) , citing *Hecht v. Commerce Clearing House, Inc*., 897 F.2d 21, 25 (2d Cir.1990)[Emphasis added]; *see also Glessner v. Kenny*, 952 F.2d 702, 714 (3d Cir.1991) (civil RICO conspiracy claim must plead agreement to commit predicate acts and knowledge that the acts were part of a pattern of racketeering activity); *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 47 (1st Cir.1991) (civil RICO conspiracy claim must charge that defendants knowingly entered into an agreement to commit two or more predicate crimes).

[101] *Twombly*, 127 S. Ct. at 1971-2.

As the Supreme Court held in *Twombly*[102], "[b]ecause the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed."[103]

b. Plaintiffs fail to plausibly allege the existence of an "enterprise" or "association-in-fact."

In order to state a claim under RICO, a plaintiff must allege, among other elements, the existence of an enterprise and association-in-fact. The Plaintiffs' Complaint does not make it plausible that either a legal enterprise or an association-in-fact existed.

An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[104] The Fifth Circuit requires that "[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise."[105]

Without any legal authority cited, Plaintiffs contend Probate Court Four is an "enterprise" within the meaning of 18 U.S.C. § 1961(4) because it was "involved in various aspects of interstate and foreign commerce" by its adjudication of lawsuits involving persons or properties outside of Texas.[106] This is a conclusory recitation and purely legal conclusion, unsupported by facts. The Fifth Circuit has held that "a recitation of the elements masquerading as facts" . . . does not make

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[102] *Id.* at 1974.
[103] Plaintiffs assert § 1983 as part and parcel of their "predicate acts." It is unclear whether Plaintiffs are asserting a conspiracy to violate § 1983. However, a § 1983 claim is not actionable without an actual violation of § 1983 and Plaintiff has not alleged facts sufficient to support a claim that there was a constitutional violation under § 1983. *See Pfannsteil v. City of Marion,* 918 F.2d 1178, 1187 (5th Cir.1990).
[104] 18 U.S.C. § 1961(4); *see also Elliott,* 867 F.2d at 881.
[105] *Elliott,* 867 F .2d at 881.
[106] Complaint, ¶ 36-38.

it any more or less probable that the listed parties have an existence separate and apart from the pattern of racketeering, are an ongoing organization, and function as a continuing unit as shown by a hierarchical or consensual decision making structure."[107]

Probate Court Four is not a legal entity. There is an abundance of case law holding that various county or city officials and departments are not separate units of government and capable of being sued. "A county is a corporate and political body." TEX. LOC. GOV'T CODE § 71.001. With respect to counties, the county as a whole constitutes the governmental unit. The commissioner's court is the governing body.[108] Plaintiff's contention that Probate Court is an "enterprise" for purposes of RICO has no basis in law or fact.

Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements.[109]

To establish an "association in fact" enterprise under 18 U.S.C. § 1961(4), a plaintiff must show "'evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit.'"[110] The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."[111] The Fifth Circuit has enumerated the requirements

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[107] *See Brunig v. Clark*, 560 F.3d 292, 297 (5th. Cir. 2009)(Rule 12(b)(6) dismissal of Plaintiff's RICO claims affirmed for failure to plead the plausible existence of an enterprise or association in fact).
[108] *Tarrant County v. Ashmore*, 624 S.W.2d 740 (Tex.App.—Fort Worth 1981), *rev'd on other grounds*, 635 S.W.2d 417 (Tex.1982), *cert. denied*, 459 U.S. 1038, 103 S.Ct. 452, 74 L.Ed.2d 606 (1982).
[109] *See, e.g., Delta Truck*, 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962.").
[110] *Atkinson v. Anadarko Bank & Trust Co.*,808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *US. v. Turkette*, 452 U.S. 576, 583 (1981)).
[111] 452 U.S. at 583.

of an enterprise as requiring that it "(1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure."[112]

"[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity."[113] However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO."[114]

Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The Absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

Having failed to plausibly allege the existence of an enterprise or association-in-fact, the Plaintiffs' Complaint must be dismissed for failing to state a claim upon which relief may be granted.

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[112] *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir.1990).
[113] *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987).
[114] *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 F.2d at 427).

c. Plaintiffs have failed to plead a pattern of racketeering activity.

Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts.[115] To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other *and* that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity."[116]

When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity."[117] Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."[118]

Here, Plaintiffs allege several times throughout their Complaint that the Harris County Defendants engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary *pattern* of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

d. Plaintiffs' Complaint is not plausible.

The Supreme Court held, "[a] pleading that offers "labels and conclusions" or "a formulaic

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[115] *See In re Burzynski,* 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck,* 855 F.2d at 242-43).
[116] *HJ, Inc. v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 239 (1989).
[117] *In re Burzynski,* 989 F.2d at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity).
[118] *Id.*, quoting *HJ., Inc.*, 492 U.S. at 241.

recitation of the elements of a cause of action will not do." [119] Nor does a complaint suffice if it tenders "naked assertions" devoid of "further factual enhancement."[120]

Further, under Rule 8(a), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). To survive dismissal, Rule 8(a) requires that a plaintiff must plead "enough facts to state a claim for relief that is plausible on its face,"[121] and must plead those facts with enough specificity "to raise a right to relief above the speculative level."[122]

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[123] The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully."[124] "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'"[125]

As is the case with their allegations of conspiracy and RICO predicate acts, the Plaintiffs have "***labeled***" myriad alleged offenses including: (1) honest services mail fraud (18 U.S.C. § 1346); (2) fraud (18 U.S.C. § 1001); (3) theft (Texas Penal Code § 31.02); (4) theft (Texas Penal Code §31.03); (5) Hobbs Act extortion (18 U.S.C. § 1951(b)(2); (6) conspiracy (18 U.S.C. § 371); (7) conspiracy to obstruct justice (18 U.S.C. §§ 1512(c), 1512(k), 1519, and 1951(b)(2) and 18

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[119] *Id.* at 1965.
[120] *Id*. at 1966.
[121] *Twombly*, 550 U.S. at 570
[122] *Id*. at 555.
[123] *Iqbal*, 556 U.S. at 678.
[124] *Id.*
[125] *Id*.

U.S.C. § 242); (8) theft and extortion (Texas Penal Code § 32.21); (9) access to the Courts (42 U.S.C. § 1983); (10) substantive due process (42 U.S.C. § 1985); (11) equal protection; (12) property rights (Texas Penal Code §§ 31.02 and 31.03); (13) spoliation (18 U.S.C. § 1512(c)); (14) aiding and abetting breach of fiduciary, defalcation & scienter; (15) aiding and abetting misapplication of fiduciary, defalcation & scienter; and (16) tortious interference with inheritance expectancy -- yet Plaintiffs have failed to plead the essential elements of a cause of action for most, if not all, of the above alleged causes of action or offenses, much less pled any non-conclusory factual support. Rather, the Plaintiffs' rambling and disjointed Complaint is littered with bald, conclusory assertions, masquerading as facts.

The Plaintiffs' Complaint, standing alone, fails to meet either the Rule 12(b)(6) "plausibility" standard or the broadly similar standards announced by the Second[126] and Ninth Circuits.[127] Plaintiffs' few factual allegations are inextricably bound up with legal conclusions (e.g., Tony Baiamonte "did unlawfully, knowingly and willfully spoliated, destroy or otherwise conceal material evidence of a racketeering conspiracy in violation of 18 U.S.C. §§ 1512(c) conspiracy 1512(k) and 1419, aiding and abetting the racketeering conspiracy. . .";[128] the Harris County Defendants "did unlawfully, willfully and knowingly conspire to alter the course of justice, under color of official right, for the purpose of executing or attempting to execute a scheme and artifice to defraud and deprive, in furtherance of a pattern of racketeering activity affecting

[126] *Trans World Airlines, Inc. v. Hughes*, 449 F.2d 51, 64 (2d Cir. 1971) (first alteration in original), rev'd on other grounds sub nom. *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363 (1973).
[127] The Ninth Circuit has held that factual allegations are not well-pleaded when they "parrot the language" of the statute creating liability. *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007).
[128] Complaint, ¶143.

interstate and foreign commerce in violation of 18 U.S.C. § 1346"[129]; on July 22, 2015, Judge Comstock "aided and abetted by persons known and unknown to Plaintiffs…did unlawfully, willfully and knowingly combine, conspire and agree with each other to obstruct and conceal evidence and engage in predicate acts including but not limited to 18 U.S.C. § 1512(c) conspiracy 1512(k), 1519 and 18 U.S.C. §§ 1951(b)(2) and 2, Extortion and Texas Penal Codes §§ 31.02, 31.03 and 32.21 (theft/extortion) by removing Summary Judgment Motions from Calendar and creating stasis,[130] as part of a conspiracy to deprive Plaintiff Curtis of an impartial forum."). These are but a few of countless examples.

Plaintiffs have not alleged any factual support that actions taken by the Harris County Defendants are predicate acts under 18 USC § 1961(b).

Read in its entirety, the complaint merely "parrot[s] the language" of the RICO statute,[131] and comprises a "threadbare recital of the elements of a cause of action, supported by mere conclusory statements."[132] Indeed, given the lack of factual detail (as opposed to a litany of *vague and conclusory* legal conclusions masquerading as facts) in the Complaint, it is impossible to even speculate as to whether the facts "might [. . .] have been the case."[133]

To plead facial plausibility, a plaintiff must set forth **factual content** that permits the courts to draw the reasonable inference that the defendant is liable.[134] The "tenet that a court must accept

[129] Complaint, ¶122.
[130] Complaint, ¶131.
[131] *See Wooten v. McDonald Transit Assocs., Inc.*, 775 F.3d 689, 696 (5th Cir.2015) citing *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007)
[132] *Iqbal*, 556 U.S. at 678.
[133] *Wooten* at p.696, citing *Trans World Airlines, Inc.*
[134] *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937. (Emphasis added).

as true all of the allegations contained in a complaint is inapplicable to legal conclusions."[135] Although the Plaintiffs allege that the Harris County Defendants engaged in, or conspired to engage in, racketeering activity in the form of fraud and other acts aimed at depleting the assets of the trust in the underlying contested probate proceeding, their Complaint is ***devoid of facts*** to make it plausible and amounts to a "threadbare recital of the elements of a cause of action, supported by mere conclusory statements."[136]

In addition to failing to plead the "***who, what where, when and how***" of mail fraud, wire fraud or state law fraud, or that *anyone* relied on such conduct, the Plaintiffs offer no "factual content allow[ing] [this] court to draw the reasonable inference" that Defendants have plausible liability such that Plaintiffs are entitled to relief for their claims.[137]

The Plaintiffs' legal conclusions are not entitled to the presumption of validity.[138] They have pled insufficient facts to establish a plausible entitlement to relief for the claims they are asserting. Because the Plaintiffs have failed to adequately plead that the alleged RICO predicate acts were a *direct and proximate cause* of injury to their personal "business or property," the Court should dismiss under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

Because the Plaintiff's Complaint is not plausible, it should be dismissed.

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[135] *Id.*
[136] *Iqbal*, 556 U.S. at 678,129 S.Ct. 1937.
[137] *See Patrick v. Wal–Mart, Inc.—Store # 155*, 681 F.3d 614, 622 (5th. Cir., 2012) citing *Amacker v. Renaissance Asset Mgmt. LLC*, 657 F.3d 252, 254 (5th Cir.2011). (quotation marks and citation omitted). [Emphasis added]
[138] *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937.

e. Plaintiffs' claims are frivolous.

A complaint is frivolous if it lacks an arguable basis in law or fact.[139] "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist."[140]

The claims brought against the Harris County Defendants are frivolous and brought in violation of FED. R. CIV. P. 11. There is no conspiracy to deprive the Plaintiffs of the assets of the Brunsting estate, no racketeering scheme and no use of the mail, wire or internet to further any alleged scheme or conspiracy. Perhaps the only "conspiracy" is that of the Plaintiffs and other litigants that are bringing these frivolous lawsuits against Harris County Probate Courts for RICO violations.[141]

As is patently obvious from Plaintiffs' 62-page Complaint, they were dissatisfied with the rulings and administration of the Brunsting probate case in Probate Court Four. **This is not a basis for bringing a lawsuit.** This case should be dismissed *with prejudice*. See *Boyd v. Biggers*, 31 F.3d 279 (5th Cir. 1994) at 285 (dismissing *with prejudice* the claims against Judge Biggers because the plaintiff did not complain of any actions that were nonjudicial in nature); *Lister v. Perdue*, No. 3:14-CV-715-D-BN, 2014 WL 7927823, (N.D. Tex., Aug. 27, 2014) at *3 (dismissing

[139] See *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S.Ct. 1728, 118 L.Ed.2d 340 (1992); *Richardson v. Spurlock*, 260 F.3d 495, 498 (5th Cir.2001)(citing *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir.1997)).

[140] *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir.1998)(*quoting McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir.1997)).

[141] Plaintiff mentions the RICO suit filed against the judges in Probate Court One, claiming it is related by "continuity." (Case 4:16-cv-00733; pending before Judge Hoyt) [Doc. 33, ¶ 51]. This smear campaign against the Honorable Judges in Probate Court One and Probate Court Four appears to be nothing more than pure harassment by disgruntled litigants. Indeed, due to the frivolous filing in the Probate Court One case, dismissal and sanctions have been sought.

with prejudice the claims against Judge Lewis and her court staff because all actions complained of were nonjudicial in nature); *Bilbrew v. Wilkinson*, No. H-05-0130, 2005 WL 3019743 *9-10, (S.D. Tex., Nov. 10, 2005)(J. Gilmore) (dismissed *with prejudice* as frivolous and finding Judge Wilkinson entitled to absolute judicial immunity). This lawsuit is frivolous because it lacks an arguable basis in law or fact. It should be dismissed with prejudice.

CONCLUSION

The case should be dismissed with prejudice in its entirety because Plaintiffs have no actionable RICO claim against the Harris County Defendants. The Honorable Judges are entitled to judicial immunity, official immunity and governmental immunity. Likewise, Tony Baiamonte is entitled to official immunity and governmental immunity. Additionally, the Plaintiffs lack standing to bring the conspiracy/RICO claims asserted in this lawsuit – Plaintiffs have failed to allege facts sufficient to establish they suffered a tangible financial loss and that it was proximately caused by any "predicate acts" by the Harris County Defendants. Further, Plaintiffs have no state law claims against the Harris County Defendants and they should be dismissed under TEX. CIV. P. & REM. CODE § 101.106. Harris County Defendants are entitled to dismissal on the Plaintiffs' claims pursuant to FED. R. CIV. P. 12(b)(1).

The case should also be dismissed with prejudice in its entirety because Plaintiffs have failed to state a claim against the Harris County Defendants. Plaintiffs have failed to allege a conspiracy, failed to allege a RICO violation, failed to establish a pattern of racketeering activity, failed to establish an "enterprise" or "association-in-fact," their claims are not plausible on their face, and their claims are frivolous.

PRAYER

For the reasons set forth above, the Harris County Defendants request the Court grant its Motion to Dismiss the Plaintiffs' Verified Complaint for Damages [Doc. 1] with prejudice, sanction the Plaintiffs for filing a frivolous and groundless lawsuit, and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

Dated: October 7, 2016.

Respectfully Submitted,

/s/ Laura Beckman Hedge
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OF COUNSEL:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 7th day of October, 2016, via ECF.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S *UNOPPOSED* AMENDED MOTION FOR LEAVE TO FILE MOTION TO DISMISS IN EXCESS OF PAGE LIMIT

Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte (collectively "Defendants"), hereby file the following Unopposed Amended Motion for Leave to File Motion to Dismiss In Excess of Page Limit ("Motion").

Section B(5)(E) of Judge Alfred H. Bennett's Court Procedures limit the filing of documents such as Defendants' Motion to Dismiss to 20 pages without leave of Court. The Court Procedures further directs the parties to seek leave when their documents exceed the page limit. Defendants seek leave to file their Motion to Dismiss in excess of the page limit, because of the complexity of the facts and law relevant to this case, and the length of the claims asserted by Plaintiffs in their extensive 62-page, 217 paragraph Complaint, the complexity of the RICO case law relevant to this case, and the number of counts alleged against Defendants (Plaintiffs have asserted at least 16 of 47 claims against the Honorable Judges and Mr. Baiamonte).

Defendants have exercised best efforts to keep their Rule 12(b)(1) and (6) Motion to Dismiss as concise, and to the point, as possible. However, the Plaintiffs' RICO claims as currently plead are believed by Defendants, after reasonable inquiry into the relevant Supreme Court and Fifth Circuit Authority, to be so deficient (as to, *inter alia*, "RICO standing and proximate cause," "RICO standing and direct injury," "pattern," "enterprise," "conspiracy," and "predicate act nexus to direct injury"), that extensive briefing was required to adequately address the myriad pleading deficiencies requiring dismissal.

Defendants' Motion is 31 pages, *exclusive of* the certificate of service. Defendants pray the Court grant them leave to file their Motion to Dismiss. This Motion for Leave is unopposed by the Plaintiffs.

PRAYER

For the reasons set forth above, Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte respectfully request the Court grant their Motion for Leave to file Motion to Dismiss in Excess of Page Limits, and award these Defendants such other and further relief, at law or in equity, to which Defendants may show themselves to be justly entitled.

Dated: October 7, 2016.

Respectfully Submitted,

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CERTIFICATE OF CONFERENCE

The undersigned counsel hereby certifies that I emailed Plaintiffs Candace Curtis and Rik Wayne Munson on October 7, 2016 to inquire whether they would be opposed to the Motion for Leave to file Motion to Dismiss in Excess of Page Limit and they advised they were **unopposed**.

/s/ Laura Beckman Hedge
Laura Beckman Hedge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 7th day of October, 2016, via ECF.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

ORDER

The Court, having considered the Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte's Unopposed Amended Motion for Leave to File Motion to Dismiss In Excess of Page Limit ("Motion"), finds the relief requested to be in order and therefore GRANTS the Motion.

It is so ORDERED.

_____ _____

Date

The Honorable Alfred H. Bennett
United States District Judge

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S
REPLY IN SUPPORT OF MOTION TO DISMISS

Plaintiffs' Response further highlights the infirmities of their Complaint, which should be dismissed because of the attorney–immunity doctrine, Plaintiffs' failure to plead the elements of a RICO claim, and the delusional and implausible nature of Plaintiffs' allegations.

I. Ms. Young is protected by the attorney–immunity doctrine.

Plaintiffs' Response to Defendant Young's Motion to Dismiss highlights the Complaint's inescapable—and irremediable—failure: In Texas, a Plaintiff cannot avoid the attorney immunity doctrine by "[m]erely labeling an attorney's conduct 'fraudulent.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Dixon Fin. Services, Ltd. v. Greenberg, Peden, Siegmyer & Oshman, P.C.*, No. 01-06-00696-CV, 2008 WL 746548, at *9 (Tex. App.—Houston [1st Dist.] Mar. 20, 2008, pet. denied) ("Characterizing an attorney's action in advancing his client's rights as fraudulent does not change the rule that an attorney cannot be held liable for discharging his duties to his client."). Plaintiffs' cannot overcome Ms. Young's immunity for two reasons:

First, although Plaintiffs' Response to Ms. Young's Motion to Dismiss contains many factual assertions, those assertions are entirely absent from Plaintiffs' Complaint—*none* of the factual assertions made in the Response appears in the Complaint. And whether Ms. Young's Motion to Dismiss should be granted is based on the assertions made in Plaintiffs' Complaint—not other filings. Second, Plaintiffs fail to address the law cited in Ms. Young's Motion. Instead, they try to justify their denomination of the fictitious criminal enterprise as the "probate mafia" and "Harris County Tomb Raiders." But these arguments do not change Ms. Young's "true immunity from suit" relating to her representation of Temporary Administrator Lester. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016). And Plaintiffs have only alleged acts relating to Ms. Young's routine handling of legal tasks as counsel for Temporary Administrator Lester. Specifically, the only assertion (although regurgitated in many different

ways) made in the Response against Ms. Young is that she represented Temporary Administrator Lester in his preparation of a single report. *See* Response [DKT. 41], at ¶¶ 22–29, 32–34, 47–48, 51, 59–60 (all discussing the "report" and Ms. Young's representation of Temporary Administrator Lester).

Plaintiffs do not dispute the law cited by Ms. Young, nor do they dispute that their allegations arise only out of Ms. Young's representation of Temporary Administrator Lester. Plaintiffs' assertion that the report is somehow fraudulent or incorrect does not change Ms. Young's complete immunity from suit, because Plaintiffs have only alleged acts relating to Ms. Young's routine handling of legal tasks as counsel for Temporary Administrator Lester. *See Byrd*, 467 S.W.3d at 481–83; *see also* Order Granting Motion to Dismiss (DKT. 320), *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733, at *9 (S.D. Tex. Oct. 7, 2016) (dismissing almost identical allegations because "**routine litigation conduct . . . cannot become a basis for a RICO suit**") (emphasis added). Thus, Plaintiffs' Complaint should be dismissed.

II. Plaintiffs' Complaint is too delusional to state a valid claim for relief.

In the last week, another Court has considered and rejected almost identical allegations to those made by Plaintiffs. *See* Order Granting Motion to Dismiss (DKT. 320), *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733 (S.D. Tex. Oct. 7, 2016). In *Sheshtawy*, three groups of plaintiffs alleged parties and attorneys practicing before Harris County Probate Court No. 1 were members of a RICO conspiracy, along with two judges. The *Sheshtawy* plaintiffs' alleged "proof" of conspiracy was that "Defendant Judge Loyd Wright and Defendant Associate Judge Ruth Ann Stiles always ruled against . . . the Plaintiffs." *See* Amended Complaint, *Sheshtawy v. Conservative Club of Houston, Inc.*, No. 4:16-cv-00733, ¶ 359 (DKT.. 102). The Court dismissed the matter, holding that the plaintiffs' allegations were "pure zanyism." *Id.* at *9.

Here, Plaintiffs make similar allegations against the parties, attorneys, and judges in Probate Court No. 4. And as in *Sheshtawy*, the allegations are frivolous, because they are too fanciful, fantastic, and delusional to state a valid claim for relief.

III. Plaintiffs still cannot articulate the elements of a RICO claim against Ms. Young.

In Ms. Young's Motion to Dismiss, Ms. Young showed that Plaintiffs' RICO claim should be dismissed for two independent reasons—Plaintiffs have not shown they suffered any injury proximately caused by a violation of RICO by Ms. Young, and Plaintiffs have failed to plead with particularity any predicate acts of mail or wire fraud by Ms. Young. Plaintiffs address neither failure.

A. Plaintiffs have not alleged they suffered any injury proximately caused by a violation of RICO by Ms. Young.

First, Plaintiffs admit that they have not suffered any injury proximately caused by a violation of RICO by Ms. Young. Indeed, Plaintiffs admit that they were not injured by the only wrongful act of Ms. Young that they allege—Ms. Young's representation of Temporary Administrator Lester, who prepared the report. Response at ¶ 28. Specifically, Plaintiffs admit that the they were not injured by the report, and, instead, the "'Report' was nothing but a vehicle for threatening Plaintiff Curtis with injury to property rights if she did not agree to enter into a mediated settlement agreement." *Id.*

But the threat of injury is not actual injury and does not create a RICO claim. *See* 18 U.S.C. § 1964(c) ("Any person injured in his business or property by reason of a violation of [RICO] may sue."). And Plaintiffs' allegations are much too tenuous to give rise to standing under RICO. Plaintiffs appear to assert that there must be some connection between Ms. Young's representation of Mr. Lester, Mr. Lester's creation of the report, the Plaintiffs' alleged fear of the "threat" of the report, and then the mediated settlement agreement that was entered

into by Plaintiffs. Response at ¶ 28. That is not sufficient under RICO. Instead, a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury." *Allstate Ins. Co. v. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015). Proximate cause requires "directness"—"the injury or damage was either a direct result or a reasonably probable consequence of the act." *Plambeck*, 802 F.3d at 676.

Here, Plaintiffs do not plead facts showing they suffered any financial loss that directly resulted from any alleged RICO violation by Ms. Young. *See Gil Ramirez Grp., L.L.C.*, 786 F.3d at 408. They argue only that they felt "threatened" by the report, which led them to agree to enter into a settlement. That cannot create an injury that creates standing to sue under RICO.

B. Plaintiffs have not pleaded facts that Ms. Young engaged in a "racketeering activity."

Even in Plaintiffs' Response, Plaintiffs fail to assert Ms. Young engaged in a pattern of "racketeering activities" sufficient to trigger the RICO statute. Under Rule 9(b), predicate RICO acts must be pleaded under the heightened pleading requirements of Rule 9(b), which requires a plaintiff to plead "with particularity." FED. R. CIV. P. 9(b). Plaintiffs have made no assertion of any predicate acts of Ms. Young they claim constitute RICO predicate acts.[1] Alleging simply that Ms. Young represented Mr. Lester and that Mr. Lester prepared the report is insufficient. That allegation alone can never rise to the level of mail fraud, wire fraud, or violations of the Hobbs Act. Further, that allegation can never constitute a "pattern" of racketeering acts by Ms. Young. Plaintiffs fail to allege "the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." *Tel-Phonic*, 975 F.2d at 1139. Nor have they pled what Ms. Young obtained by making the alleged misrepresentation.

[1] As shown in Ms. Young's Motion to Dismiss, Plaintiffs' wire fraud, mail fraud, and Hobbs Act claims fail, because they cannot be asserted as private causes of action. Plaintiffs do not dispute this.

IV. Plaintiffs' Complaint remains too implausible to state a valid claim for relief.

Plaintiffs try to argue their Complaint is plausible because "Defendants . . . cannot[] point to the record in any proceeding where Plaintiffs have been on the losing end of any fully litigated state court determinations. . . ." Response at ¶ 18. Plaintiffs completely miss the mark.

Plaintiffs' attempts to re-litigate as RICO claims issues decided in state court fail. If Plaintiffs desired to challenge determinations made in state court, there are appellate processes for that. Plaintiffs also ignore that Ms. Young **was not party to the underlying proceedings**. Whether Plaintiffs were on the "winning" or "losing end" of any determination in state court has nothing to do with Ms. Young, who merely acted as the attorney for Temporary Administrator Lester. Thus, Plaintiffs' Complaint remains too implausible to state a claim against Ms. Young.

V. Plaintiffs' references to a prior lawsuit are irrelevant.

Plaintiffs repeatedly reference a prior suit in this district, *Curtis v Brunsting*, No. 4:12-cv-0592, which was remanded to state court. But Plaintiffs' references make no sense and are irrelevant. That matter was remanded to Harris County **at Plaintiff Curtis's own request**. *See* Order Granting Unopposed Motion to Remand by Candace Louise Curtis, *Curtis v Brunsting*, No. 4:12-cv-0592 (DKT. 112) (S.D. Tex. May 15, 2014). Plaintiff Curtis cannot relitigate as some kind of fraudulent act something she requested from the Court. Second, Plaintiffs' references to that matter are also irrelevant to its claims against Ms. Young. Neither Ms. Young nor her state court client, Temporary Administrator Lester, had any involvement in the prior federal court matter—they were not parties to that matter, they never acted as attorneys in that matter, and they never appeared in that matter.

VI. Conclusion

For the reasons stated above and in Ms. Young's Motion to Dismiss, this Court should dismiss Plaintiffs' claims against Ms. Young with prejudice.

Dated: October 11, 2016

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above Certificate of Interested Parties has been served on October 11, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S CERTIFICATE OF INTERESTED PARTIES

Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte file this Certificate of Interested Parties pursuant to the Court's July 6, 2016 Order, ¶ 2 [Dkt. No. 3]. Persons or entities with an interest in the outcome of this case are as follows:

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Dated: October 12, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 12th day of October, 2016, via ECF.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis et al.,	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:16-CV-01969
v.	§	
	§	The Honorable Alfred Bennett
Kunz-Freed et al.,	§	
Defendants	§	

Plaintiffs' Answer to Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 9(b)

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I. INTRODUCTION

1. This is a private interest as well as a public interest lawsuit, as the subject matter relates to the legitimate administration of public justice.

2. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act (RICO) at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c).

3. On October 7, 2016, Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte filed a combined motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) (Dkt 53).

II. STANDARDS OF REVIEW

Federal Rule 12(b)(1)

4. Whether or not a court has subject matter jurisdiction over a party is a question of law reviewed de novo; thus, a decision on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction is an issue of law reviewed de novo. *Hunter Douglas, Inc. v. Harmonic Design, Inc.*, 153 F.3d 1318, 1325, 47 U.S.P.Q.2d 1769, 1772 (Fed. Cir. 1998).

5. On a Rule 12(b)(1) Facial Attack the court evaluates whether the plaintiff "has sufficiently alleged a basis of subject matter jurisdiction" in the complaint and employs standards

similar to those governing Rule 12(b)(6) review. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335 (11th Cir. 2013).

6. In contrast to a facial attack on subject matter jurisdiction, a Rule 12(b)(1) factual attack "challenge[s] the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings such as testimony and affidavits are considered." *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (internal quotation marks omitted).

7. When the attack is factual "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.* Therefore, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.*

8. We review de novo a district court's dismissal for lack of subject-matter jurisdiction under *Rooker–Feldman* and Rule 12(b)(1), and for failure to state a claim under Rule 12(b)(6), applying the same standards as the district court. *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 381 (5th Cir. 2013). We review a dismissal under Rule 12(b)(1) for lack of subject-matter jurisdiction under the same pleading standard as a dismissal under Rule 12(b)(6). *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008). In reviewing the complaint, "we take the well-pled factual allegations of the complaint as true and view them in the light most favorable to the plaintiff."

9. The denial of a motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction is not immediately appealable. *Data Gen. Corp. v. Cnty. of Durham*, 143 N.C. App. 97, 100, 545 S.E.2d 243, 245-46 (2001).

Federal Rule 12(b)(6)

10. When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must take the facts alleged in the complaint as true and construe them in the

light most favorable to the plaintiff. *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1321–22 (11th Cir. 2012). To survive Rule 12(b)(6) scrutiny, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[F]acial plausibility" exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing Twombly, 550 U.S. at 556).

11. The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is de novo , and the Court will employ the same standard as the district court. *First Am. Title Co. v. Devaugh*, 480 F.3d 438, 443 (6th Cir. 2007); *Nat'l Hockey League Players Ass'n v. Plymouth Whalers Hockey Club*, 419 F.3d 462, 468 (6th Cir. 2005).

12. *Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) ("Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.") (internal quotation marks and citation omitted)).

13. We review de novo the district court's grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Sullivan v. Leor Energy, L.L.C.*, 600 F.3d 542, 546 (5th Cir. 2010) (citation omitted). This court construes facts in the light most favorable to the nonmoving party, "as a motion to dismiss under 12(b)(6) 'is viewed with disfavor and is rarely granted.'" *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (citation omitted). Dismissal is appropriate only if the complaint fails to plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Yet, the complaint must allege enough facts to move the claim "across the line from conceivable to plausible." *Id.* Determining whether

the plausibility standard has been met is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) (citation omitted).

III. ISSUES PRESENTED

14. Defendants do not number their pleadings but at page 4 Defendants list the ground for their motions.

(1) Complaint fails to state a claim sufficient to meet the requirements of Rules 8 and 9(b);

(2) the Complaint fails to state a RICO claim or RICO conspiracy claim against the Harris County Defendants;

(3) the Complaint fails to allege standing under RICO;

(4) the Complaint fails to allege a conspiracy;

(5) the Complaint is not plausible;

(6) the Complaint fails to plausibly allege the existence of an "enterprise" or "association-in-fact," and;

(7) the Complaint is frivolous;

15. Defendants claim judicial, qualified and official immunity;

16. Defendants claim a contrary view of the Facts

IV. CONTEXTUAL SUMMARY

17. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl, Carole, Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al, per stirpes.

18. Plaintiff filed suit against her siblings Anita and Amy Brunsting for breach of fiduciary and constructive fraud demanding accounting and disclosures of the assets of the various family trusts. That matter *Candace Curtis v Anita and Amy Brunsting et al*., 4:12-cv-0592 filed in the Southern District of Texas February 27, 2012, was dismissed sua sponte under the probate exception to federal diversity jurisdiction.

19. The controversy was returned to the federal District Court after review by the Fifth Circuit, *Curtis v Brunsting* 704 F.3d 406 (Jan 9, 2013).

20. On January 29, 2013, Defendant Bayless improperly filed a suit in the Harris County District Court against Defendants Albert Vacek, Jr. and Candace Kunz-Freed, in the name of the Estate of Nelva Brunsting, raising only issues relating to the Brunsting trust known to be in the custody of a federal Court.

21. Upon remand to the United States District Court, Curtis applied for a protective order and on April 9, 2013 the Honorable Judge Kenneth Hoyt, after a fully contested judicial proceeding, found that Plaintiff Curtis had met all four federal criteria and issued an injunction with findings of fact, conclusions of law, and Order after hearing, something no one has seen since!

22. On April 9, 2013 Defendant Bayless improperly filed a second suit, this time in Harris County Probate Court No. 4, again raising only issues relating to the Brunsting trust known to be in the custody of a federal Court.

23. In September of 2013, Plaintiff Munson was hospitalized and in a coma. Subsequently Munson underwent his third open heart surgery to replace his aortic trunk and valve due to an aneurysm.

24. In the interim Plaintiff Curtis retained the services of Defendant Jason Ostrom, a Houston attorney. Mr. Ostrom thereafter presented Judge Hoyt with an uncontested motion to amend

Curtis' Petition to pollute diversity in order to effect remand to the state probate court, to consolidate Plaintiff Curtis' claims with those of Plaintiff Carl Brunsting, and the matter thus finds itself in Harris County Probate Court No. 4.

The RICO Complaint

25. In response to Rule 12(b)(6) motions to dismiss, on September 15, 2016, Plaintiffs filed the Rule 11(b) and Rule 60 Motions, previously filed in Judge Hoyt's Court,[1] as an Addendum of Memorandum (Dkt 26), supplementing and incorporating by reference the original RICO complaint in this case.

26. The "pleadings" include the complaint, answer to the complaint, and "if the court orders one, a reply to an answer." Federal Rule of Civil Procedure 7(a).

27. An amended complaint supersedes earlier pleadings. See *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) ("An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.").

28. The Complaint (Dkt 1) thus, also includes the Addendum (Dkt 26) and the exhibits attached thereto.

V. THE ARGUMENT

29. Defendants allege a want of subject matter jurisdiction based upon claims of judicial immunity and lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1).

30. The crux of the standing challenge is a counter claim that Plaintiffs have not been injured within the meaning of the RICO statutes and uses expressions such as "inheritance" and "expectancy" in the explanation for their reasoning.

[1] Curtis v Brunsting 4:12-cv-592 filed TXSD February 27, 2012

31. Defendants also seek to offer their own opinion and contrary facts, but may not do so in a Rule12(b)(6) motion and fail to support their opposing claim of facts with affidavits or exhibits, as required for a Rule 12(b)(1) factual challenge and, thus, their claim of opposing facts are not cognizable by the Court within the context of these motions.

32. At page 15 Defendants claim *"The actions Plaintiffs complain of are the rulings and Orders issued by the Honorable Judges"* however, Defendants fail to support their claims with reference to the record and that would be because there are no such events.

33. The complaint makes clear on page 12 of the Addendum (Dkt 26), beginning at line 62 and thereafter, that the Probate Court set motion hearings for lawyers and removed those motions from Calendar for the lawyers, but refused to set Curtis' Motions for hearing, and the attorneys refuse to answer. (See Dkt 26-5, 6, 8, 11, 14, 15, 17 and 19, the list of exhibits is at page 28 or 31) These records and pleadings are all attached and incorporated into the RICO complaint by reference.

34. Defendant Clarinda Comstock has exclusive control of the Docket in Probate Court No. 4, and it is Defendant Clarinda Comstock that decides what gets set for hearing and when, and what does not find its way to the calendar. Defendant Clarinda Comstock refused to set Plaintiff Curtis' Motions for hearing (Dkt 26-15 request for setting and Dkt 26-16 transcript of setting conference). Those are the facts alleged in the complaint, and under the law governing the motion to dismiss here, (Dkt 53) Plaintiff believes those are the only facts under consideration.

35. Defendants' contrary opinions have no veracity in a Rule 12(b)(6) factual challenge at all, and without evidentiary support sufficient to controvert the controlling presumption that Plaintiffs' facts are true, Defendants' contrary opinions have no veracity in a Rule 12(b)(1) factual challenge either.

36. The public record of proceedings in the state court may be subject to varying interpretations, but the evidentiary legitimacy of those records clearly outweighs any contrary claims by these Defendants.

Subject Matter Jurisdiction

37. The pivotal issue before the Court in regard to all of the motions to dismiss for want of subject matter jurisdiction is whether or not the state probate court properly assumed in rem jurisdiction over the Brunsting trust res, in the custody of a federal Court when trust related claims were filed as "Estate" claims in state courts.

38. Defendants proclaim that they are clothed in an incorporeal substance known as subject matter jurisdiction and that their illicit conduct is thus protected by "*absolute judicial immunity from suit for acts undertaken in their judicial capacity even if they are done maliciously or corruptly*"[2], but the state courts had no authority to take cognizance of matters related to the Brunsting trusts while those trusts were under the in rem custody of a federal Court. Defendat Bayless' probate suit was filed the same day the Honorable Kenneth Hoyt issued an injunction against the same Defendants, relating to the same trust and seeking similar relief.

39. The Fifth Circuit Court of Appeals' Opinion in Curtis v Brunsting 704 F.3d 406 (Dkt 26-17), properly characterized the underlying suit, (Curtis v Brunsting 4:12-cv-00592) as a lawsuit relating only to the Brunsting trusts, not falling under the probate exception to federal diversity jurisdiction.

40. The Fifth Circuit also observed that the Wills of Elmer and Nelva Brunsting bequeathed everything to the Brunsting trusts, that assets in the trust were not assets belonging to the estate and, therefore, not subject to probate administration.

[2] Dkt 53 Page 12 Ln. 4 (unnumbered)

41. The record is abundantly clear that the Brunsting trusts were in the in rem custody of another court when trust related claims were filed in state courts and that the probate court was completely without subject matter jurisdiction at all times complained of.

42. Where there is no jurisdiction there is no court, no judge and no litigation.

43. When then record is examined, it becomes abundantly clear that no one participated in Curtis v Brunsting in the probate court. Only Plaintiff Curtis pled under the heading of Curtis v Brunsting and none of the motions and pleadings have been answered or set for hearing despite Curtis' best efforts to obtain a fully litigated judicial determination in that court.

44. Defendants provide a plethora of case law relevant to their alternate claim of facts, but erroneous facts are of no value and case law built thereupon is misleading.

45. In the underlying matter, continually referred to by Defendants as a probate case, the lawsuits filed in both state courts related only to the Brunsting trust and were filed in state courts while the Brunsting trust was clearly in the custody of a federal Court.

46. Carl Brunsting had no individual standing to bring claims in probate court, as he is not an heir to either estate.

47. The suit against Candace Kunz-Freed, raises claims involving only the trust, was filed January 29, 2013 while the trust was in the custody of a federal Court, and the Harris County District Court could not take judicial cognizance of the subject matter.

48. The later probate case filed April 9, 2013, raises claims only related to the Brunsting trusts and was also improperly filed into a court that could not take judicial cognizance of the subject matter, by an individual with no standing as an heir of the estate and, as the real party in interest is the trust, Carl also had no standing to bring trust related claims as executor of the Estates.

Standing

49. Defendants base their claim that Curtis lacks standing on the misrepresentation that all Curtis has is an expectancy in an estate, but as has been shown, Curtis is not an heir to either Estate, only a beneficiary of the heir in fact trust.

50. Defendants challenge of standing against Plaintiff Munson is that Munson is not party to the underlying matters and has suffered no injury.

51. Munson however, has been compelled to combat this public corruption at great personal expense in time and resources. Over the last five years those costs have been exacerbated by the improper actions of all of these Defendants, placing unnecessary economic burdens upon Plaintiffs' household.

52. Defendants are accused of aiding and abetting a pattern of known predicate act conduct, by Anita and Amy Brunsting in pursuit of their own personal agenda, and each can be shown to have provided a necessary part to the montage. The success or failure of such a venture is not an element of these claims. The mere fact of the attempt to extort is sufficient.

Dismissal with Prejudice

53. Defendants ask for dismissal of Plaintiffs' RICO Complaint with prejudice. Such relief is drastic and operates under Federal Rule of Civil Procedure 41(b) as adjudication on the merits.

54. Factors to be weighed in considering dismissal under Rule 41(b) include: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives." *Yourish v. California Amplifier,* 191 F.3d 983, 990 (9th Cir. 1999) (quotations omitted).

55. Defendants do not even begin to approach their burden here. Without subject matter jurisdiction their judicial immunity claims fail and we are left with only the facts to consider.

Tension between Rule 8(a) and 9(b)

56. Federal Rule of Civil Procedure 8 requires that a complaint put forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Federal Rule of Civil Procedure 8(a)(2). Each allegation in a complaint must be "simple, concise, and direct." Federal Rule of Civil Procedure 8(d)(1). This court has affirmed dismissal on Rule 8 grounds where the complaint is "argumentative, prolix, replete with redundancy, and largely irrelevant," *McHenry*, 84 F.3d at 1177, 1180, and where the complaint is "verbose, confusing and conclusory," *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981).

VI. CONSPIRACY AND AIDING AND ABETTING

57. A defendant in a case charging a conspiracy may be liable for each of the substantive counts charged in an indictment under three separate theories:

1. Actual commission of the crime; 2. Participation in the crime as an aider or abettor; 3. Liability under a Pinkerton theory[3].

58. A conspiracy is an agreement between two or more people to join together to attempt to accomplish some unlawful purpose. It is a kind of "partnership in crime" in which each member becomes the agent of every other member. It does not matter whether or not the conspiracy was

[3] *United States v. Ailsworth, 867 F.Supp. 980, 987 (D. Kan. 1994*. The government may prove liability under any alternative theory, and the jury will not return a verdict indicating the precise manner in which the defendant committed the crime. Id. Furthermore, a jury finding that one is guilty of aiding and abetting a crime is not the equivalent of a finding of a conspiratorial agreement. United States v. Palozzale, 71 F.3d 1233, 1237 (6th Cir. 1995). There is no requirement that there be an agreement in order to convict one of aiding and abetting. United States v. Frazier, 880 F.2d 878, 886 (6th Cir. 1989), cert. denied, 493 U.S. 1053, 110 S.Ct. 1142, 107 L.Ed.2d 1046 (1990). Conspiracy to commit a crime and aiding and abetting in the commission are distinct offenses. Id. See also *United States v. Superior Growers Supply*, 982 F.2d 173, 178 (6th Cir. 1992).

successful. The essence of the offense is that two or more persons have combined, or mutually agreed, to do something illegal. *Iannelli v. United States,* 420 U.S. 770, 777 (1975)

59. The elements are FIRST: That two or more persons agreed to try to accomplish a common and unlawful plan, as charged in the indictment; and, SECOND: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

60. One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to further some object of the conspiracy. *Blumenthal v. United States,* 332 U.S. 539, 557 (1947) One may become a member of a conspiracy without knowing all of the details of the unlawful plan or the identities of all of the other alleged conspirators. If the defendant, with an understanding of the unlawful character of a plan, knowingly joins in an unlawful scheme on one occasion that is sufficient to convict him of conspiracy, even though he had not participated before and even though he played only a minor part in the conspiracy.

61. The evidence in the case need not show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated between themselves the details of the scheme and its object or purpose, or the precise means by which the object or purpose was to be accomplished. Similarly, the evidence in the case need not establish that all of the means or methods which were agreed upon were actually used or put into operation. Nor must the evidence prove that all of the persons charged were members of the conspiracy. *United States v. Falcone,* 311 U.S. 205, 210(1940).

62. Without subject matter jurisdiction over any Brunsting trust matter these Defendants are without immunity in the present suit and, without their rubber stamp immunity defense, their conduct is fully subject to scrutiny.

63. It is difficult to imagine an acceptable explanation for failure to distinguish between a trust and an estate, given the fact the wills bequeath everything to the trust. It is equally difficult to imagine a satisfactory explanation for refusal to set any of Plaintiff Curtis' motions for hearing and refusal to rule on any substantive matters. A reasonable initial question would be something like, what is the meaning of this? (Exhibits 1, 2 and 3 attached)

64. Plaintiffs point only to the public record in support of facts and these Defendants, claiming to be judges in cases involving these public records, cannot claim ignorance of those facts.

65. Plaintiffs believe they have made substantially more than a prima facia case in the Complaint (Dkt 1), in the Addendum to the Complaint (Dkt 26), in this reply, and in each reply to a motion to dismiss filed in this case to date.

66. As for Mr. Baiamonte, Plaintiff Munson spoke with Mr. Baiamonte and was not satisfied with the answer to inquiries regarding unavailability of a transcript for September 10, 2015.

67. Plaintiff Munson requested a written explanation and Mr. Baiamonte promised to reply with an email. After text message reminders failed to produce the promised statement, Mr. Baiamonte was added to this complaint.

VII. FRIVOLOUS, RULES 12(B)(6) AND 1915(D)

68. Dismissal of frivolous pleadings are governed by Federal Rule of Civil Procedure §1915(d).

> *[t]o the extent that a complaint filed in forma pauperis which fails to state a claim lacks even an arguable basis in law, Rule 12(b)(6) and § 1915(d) both counsel dismissal. But the considerable common ground between these standards does not mean that the one invariably encompasses the other. When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. Accordingly, "frivolousness in the §1915(d) context refers to a more limited set of claims than does Rule*

12(b)(6)[;] ... not all unsuccessful claims are frivolous." Neitzke, 490 U.S. at 328 (footnote omitted).

69. Under Rule 12(b)(6), a plaintiff with an arguable claim is ordinarily accorded notice of a pending Rule 12(b)(6) motion to dismiss for failure to state a claim and an opportunity to amend the complaint before the motion is ruled upon. These procedures alert him to the legal theory underlying the defendant's challenge, and enable him meaningfully to respond by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to conform to the requirements of a valid legal cause of action. Plaintiffs thus added an Addendum of Memorandum under the authority of Federal Rule of Civil Procedure 15(a)(1).

The Estate of Nelva Brunsting

70. As has been shown, the Fifth Circuit (Dkt 34-4) distinguished between the Brunsting Trust litigation and any prospective probate of the Estates of Elmer or Nelva Brunsting, using the same information available to the probate court, “the Wills of Elmer and Nelva Brunsting” (Dkt 41-2 and 41-3) and in their analysis the Fifth Circuit determined that Brunsting trust assets were not property of either estate and that the trust was in fact the only estate heir.

The Brunsting Trusts

71. Plaintiff Curtis is a beneficiary of an inter vivos trust, not an heir to any estate.

72. Plaintiff Curtis’ beneficial interest is property, not an inheritance or expectancy.

73. The estate has no standing to bring claims against beneficiaries of the trust, alleging trespass against the heir in fact (trust), simply because the alleged trespass occurred during the lifetime of a grantor.

VIII. SUFFICIENCY OF THE PLEADINGS

74. Each of these Defendants will claim that Plaintiffs failed to plead a particular act that implicates them individually without regard for the language of the allegations or federal aiding, abetting and conspiracy laws.

IX. CONCLUSION

75. Plaintiffs have rarely found truth to be well received by those it does not flatter.

76. These Defendants needed 10 extra pages to express their disdain for the descriptive labels given to their probate court activities by the general population, such as "Tomb Raiders" and "Probate Mafia", and to bolster their claims of immunity. Plaintiffs merely adopted the expressions because the shoe fits. The only expression Plaintiff Munson believes he may have coined is "Judicial Black Market" and, quite frankly, if someone has a better explanation for the Gregory Lester/Jill Willard Young Report, in Toto with the rest of this song and dance, Plaintiffs are all ears.

77. A Rule 12 Motion is not a substitute for an answer. Defendants none-the-less use the motion as a vehicle to deny there has been any conspiracy to loot the Brunsting Trusts. If that is true, how did Curtis v Brunsting and the Brunsting trusts completely lose their identity and become the "Estate of Nelva Brunsting" once in the clutches of the probate court?

78. The state probate court could not assume jurisdiction over the Brunsting trusts on April 9, 2013, under any theory, and each of these legal professionals have a duty to know the facts of their cases and the relevant law.

79. Plaintiffs herein respectfully request this Honorable Court take judicial notice of the public record pursuant to Federal Rule of Evidence §201, to wit: Harris County Probate Court No. 4, Case: 412248, 412249, 412249-401, 412249-402 and No. 4:12-cv-00592; Candace

Louise Curtis v. Anita Kay Brunsting; United States District Court for the Southern District of Texas, Houston Division, and the records and pleadings in this action.

80. The record will show that after Carl Brunsting resigned as executor for the "Estates of Elmer and Nelva Brunsting" February 15, 2016, Defendant Bayless filed a number of amendments and supplements to her complaint, but in no event did she change the heading nor did she sever the claims of Carl Brunsting individually from those brought as executor.

81. While the state probate court clearly has jurisdiction over any probate of the Estates of Elmer and Nelva Brunsting, it did not have the authority to take cognizance of the Brunsting trust in the custody of a federal Court.

82. When claims directly relating to the Brunsting trusts are stripped away from the claims filed in the name of the "Estate", nothing remains. The estate inventory (Dkt 41-6) shows only an old car.

83. After examining the March 9, 2016 transcript (Dkt 26-16), and the detail of events in the Addendum (Dkt 26 pgs 4-30), it is difficult for Plaintiffs to perceive how they could have possibly failed to state a RICO claim when the Complaint is based upon the U.S. Attorney's Criminal Procedures Manual and the forms provided therein.

84. It is equally difficult to perceive how these Defendants have inadequate notice of the facts when they are entirely contained in the record of the very proceedings Defendants claim to have been adjudicating.

85. The immunity portion of the Rule 12(b)(1) facial challenge fails at the test of subject matter jurisdiction for the reasons stated above, leaving the conduct itself open to examination.

86. Where does corruption get a pass merely because it is clothed in a costume resembling the judicial branch of lawful government? Such notions of immunity are clearly the equivalent of

a theory that a wolf in sheep's clothing is no longer a wolf. The Sheeple on the battle field called the streets of America are not finding that to ring true.

87. Yes, there is a pandemic of public corruption plaguing America and the root causes are all the same. Munson would be more than happy to detail the various color of law operations of lower level state courts replete with incidents and federal lawsuits currently pending from San Diego to New York with stops in such places as Houston and Ferguson. However, the very narrow issue before this Court is one of probate court corruption and this case deals with only one of many such courts.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Motion to Dismiss (Dkt 53) filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte, August 7, 2016.

Respectfully submitted October 13, 2016,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

X. CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 13th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson
Rik W. Munson

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

DATA ENTRY
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03/02/2015 08:15:P0002

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

****

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Christine Butts
JUDGE PRESIDING

03092015:0815:P0003

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Stan Stanart
County Clerk
Harris County

20000051801:5102603O

DATA ENTRY
PICK UP THIS DATE

PROBATE COURT 4

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IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
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SIGNED on this ____ day of _____, 2015.

_____
JUDGE PRESIDING

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60004:5180:5102060

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Subject: Fw: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 6/24/2016 8:43 AM
To: Rik Munson <blowintough@att.net>

sick, sick, sick
be sure to read down to where Drina and Bobbie are talking about forwarding it to me and deleting the rest of the email...

On Wednesday, March 25, 2015 6:23 PM, Drina Brunsting <drinabrunsting@sbcglobal.net> wrote:

FYI--Judge Butts' email to the attorneys:

Sent: Wednesday, March 25, 2015 3:19 PM
Subject: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Dear Attorneys,

As you know, we met together on Monday, March 23rd for a status conference. At that status conference we discussed: 1) the district court case and whether a consensus could be reached that it should be transferred to Probate Court 4 (no consensus was obtained); 2) the Motion to Compel (modified order signed); and 3) Carl Brunsting's Application to Resign and the appointment of a successor personal representative.

This email is to discuss the appointment of a successor personal representative considering the fact that Carl Brunsting must resign. As you all know, the Will of Nelva Brunsting provides that Amy and then Candace shall serve as alternate executors to Carl. Normally, Amy would be appointed so long as she was qualified. However, Carl in both his individual capacity and in his capacity as the Executor of the Estate has filed suit against Anita, Amy, Carole, and Candace (Petition for Declaratory Judgment, for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, Together with Request for Disclosures, filed April 9, 2013 and as amended) in Probate Court 4. Consequently, it would likely be argued that Amy is unsuitable to serve given the conflict of interest, as she would have to pursue (or choose not to pursue), as successor Executrix, a claims filed against her individually and as trustee of several trusts. Though Candace is named as a defendant in the case pending in Probate Court 4, she appears to be a defendant only because her rights may be affected. In an effort to address the need for the appointment of a successor personal representative, short-circuit the process of sorting out claims of disqualification, and efficiently proceed with the administration of the estate, may I suggest that you all agree on the appointment of an independent third party as the successor personal representative?

Even if all agree that the appointment of an independent third party as successor administrator (or independent administrator) is advisable, the matter of paying such appointee remains difficult, as I understand the Estate of Nelva Brunsting contains little if any liquid assets. It was suggested that the assets of the Brunsting Family Living Trust, originally formed in 1996, (or its progeny) could be

used to fund the appointment of a third party administrator. In the Restatement of such trust, signed in 2005, on page 8-4, Art. VIII, Sec. D, Part 1, the Trustee is specifically authorized to pay "expenses of administering the surviving Founder's estate." The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), signed by Nelva E. Brunsting in 2010, appears to ratify the Trustee's authority to pay the administration expenses of the surviving Founder's estate, as such QBD did not appear to amend such provisions of the Restatement and provided at the bottom of page 36 that, "All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby." However, I do not have a copy of the document mentioned above in red; so, I cannot confirm that it did not amend the Trustee's authority to pay administration expenses of the surviving Founder's estate. At any rate, unless such authority was edited by the document mentioned in red, it seems clear that the Trustee may pay the administration expenses of the estate of Nelva Brunsting.

Considering that the Trustee seems to have the discretionary power to pay administration expenses directly, as far as I can see, all the talk about deemed distributions to children to pay such expenses and considerations related to spend thrift provisions (addressed by Ms. Thornton) and special needs provisions (which I brought up not knowing whether or not it could be an issue) may be moot.

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1. The Trustee(s) agree to pay court approved fees and expenses of administrator (even if the administration in independent, the court is amenable to reviewing and approving fees if this will give the Trustee(s) more comfort in making disbursements from the trust).
2. The parties agree on the appointment of a particular person to serve as administrator and decide whether or not such person should serve independently, or the parties agree that the court shall appoint an independent third party administrator (dependent or independent).
3. The administrator would, among other things, respond to discovery requests, prepare an accounting, and evaluate and perhaps pursue claims in district court.

Thank you all for your consideration of this analysis and my suggestions. Please do not consider any of the statements herein to be an advanced ruling or finding.

Very truly yours,

Christine Butts
Judge, Harris County Probate Court 4
201 Caroline, 7th Floor
Houston, Texas 77002
(713)368-6767
http://www.co.harris.tx.us/probate/crt4/default.aspx
christine.butts@prob.hctx.net

When you do the reply, just erase everything until you get down to Judge Butts' email.

17-20360.2677

----- Original Message -----
From: Drinabrunsting
To: Bobbie Bayless
Sent: Wednesday, March 25, 2015 7:51 PM
Subject: Re: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

I would like for Candy to be able to read this but I dont want to forward your email. Should I cut and paste her email or leave Candy out?

Sent from my Samsung Epic™ 4G Touch

Bobbie Bayless <bayless@baylessstokes.com> wrote:
Just in Nelva's estate--not in the trusts.
----- Original Message -----
From: Drinabrunsting
To: Bobbie G Bayless
Sent: Wednesday, March 25, 2015 7:01 PM
Subject: RE: Fw: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Where did she get the notion that there are no liquid assets?

Sent from my Samsung Epic™ 4G TouchBobbie G Bayless <bayless@baylessstokes.com> wrote:We finally got this email from the judge about appointing an independent person and paying for their services.

----- Original Message -----
From: Butts, Christine (Probate Courts)
To: bayless@baylessstokes.com ; brad@mendellawfirm.com ; nspielman@grifmatlaw.com ; Darlene Smith (dsmith@craincaton.com) ; Jason Ostrom (jason@ostromsain.com) ; nicole@ostromsain.com
Cc: Comstock, Clarinda (Probate Courts)
Sent: Wednesday, March 25, 2015 3:19 PM
Subject: The Estate of Nelva E. Brunsting, Deceased; In Probate Court 4 of Harris County; Cause No. 412,249

Dear Attorneys,

As you know, we met together on Monday, March 23rd for a status conference. At that status conference we discussed: 1) the district court case and whether a consensus could be reached that it should be transferred to Probate Court 4 (no consensus was obtained); 2) the Motion to Compel (modified order signed); and 3) Carl Brunsting's Application to Resign and the appointment of a successor personal representative.

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Thank you all for your consideration of this analysis and my suggestions. Please do not consider any of the statements herein to be an advanced ruling or finding.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(1) and 12(b)(6) Motion to Dismiss filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte, on October 7, 2016, Docket entry 53, should be Denied.

It is SO ORDERED

_____
Date

_____
The Honorable Alfred H Bennet
United Stated District Judge

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

CANDACE LOUISE CURTIS AND RICK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
V.	§	**CIVIL ACTION NO. 4:16-CV-01969**
	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN A. MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER, JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTTS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA 'BRUNSTING, AND AMY BRUNSTING,	§	
	§	
Defendants.	§	

MOTION TO STAY RULE 26(F) CONFERENCE AND ALL DISCOVERY PENDING RESOLUTION OF MOTIONS TO DISMISS

Defendants[1] file this motion respectfully requesting that the Court stay all discovery and other proceedings in this action, including the Rule 26(f) conference and initial pretrial and scheduling conference, until the Court rules on the Motions to Dismiss filed by Defendants. Each of the Motions to Dismiss on file with the Court has the potential to resolve the entire case and obviate the need for discovery altogether.

Pursuant to the Federal Rules of Civil Procedure, a court has discretion to stay discovery "for good cause shown." FED. R. CIV. P. 26(c). A district court may limit discovery when a dispositive motion would preclude the need for discovery, saving the parties time and expense.

[1] "Defendants" refer to each undersigned Defendant that has been served and appeared in Case No. 4:16-cv-00733 as of October 13, 2016, except for Amy Brunsting.

17-20360.2682

See Ingram Corp. v. J. Ray McDermott & Co., 698 F.2d 1295, 1304 n.13 (5th Cir. 1983) (holding it was not an abuse of discretion for district court to fully stay discovery in the early stages of the dispute when claims and defenses presented threshold legal issues). And this is particularly true for motions to dismiss under Rule 12(b)(6), which are decided solely by reference to the complaint and proper attachments. *See Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901 F.2d 404, 436 (5th Cir. 1990) (affirming entry of protective order where discovery was unnecessary to resolve pending dispositive motion).

In this case Plaintiffs have filed a 62-page Complaint with hundreds of pages of attachments alleging RICO, fraud, and other fiduciary duty claims against dozens of Defendants. *See* Dkt. No. 1. Most of the Defendants have filed Motions to Dismiss seeking the dismissal of all of Plaintiffs' claims, and additional Motions to Dismiss are expected to be on file in the near future. *See* Dkt. Nos. 19, 20, 23, 25, 26, 30, 35, 36, 39,40, and 53. Discovery is not necessary to resolve any of the Motions to Dismiss, which will be decided solely by reference to the Complaint and its attachments. *See Landry*, 901 F.2d at 436. And even if the pending Motions do not resolve all of the claims asserted, they are very likely to define and narrow the scope of discovery. *See Sai v. Dep't of Homeland Sec.*, 99 F. Supp. 3d 50, 58 (D.D.C. 2015) ("Both threshold motions raise significant issues, and their resolution will likely define the scope of discovery, if any.").

Thus, Defendants submit there is good cause to stay all discovery pending the outcome of the Motions to Dismiss and respectfully request that the Court stay all discovery, including the Rule 26(f) conference and the initial pretrial and scheduling conference, until the Court rules on the pending Motions to Dismiss.

Dated: October 13, 2016

Respectfully submitted,

/s/ Cory S. Reed

Zandra E. Foley
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Federal ID No. 632778
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One Riverway, Suite 1400
Phone 713-403-8200
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Attorneys for Defendants Candace Kuntz-Freed and Albert Vacek, Jr.

/s/ Bobbie G. Bayless

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Bayless & Stokes
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Telephone: (713) 522-2224
Facsimile: (713) 522-2218
Attorney for Defendant Bobbie G. Bayless

/s/ Laura Beckman Hedge

Laura Beckman Hedge
Assistant County Attorney
Attorney-in-charge
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Federal Bar No. 23243
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Telephone: (713) 274-5137
Facsimile: (713) 755-8924
Attorney for Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte

/s/ Martin S. Schexnayder

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/s/ Robert S. Harrell
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Attorney for Defendant Jill Willard Young

/s/ Stephen A. Mendel
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1155 Dairy Ashford, St 104
Houston, TX 77079
Telephone: (713) 759-3213
Facsimile: (713) 759-3214
Attorney for Defendants Stephen A. Mendel and Bradley Featherston

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Facsimile: (713) 589-5513
Attorneys for Defendant Jason B. Ostrom

/s/ Anita Brunsting
Anita Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904
akbrunsting@suddenlink.net
Pro se Defendant

CERTIFICATE OF CONFERENCE

On October 13, 2016 at 9:19 a.m., Rik Munson, spokesperson for Plaintiffs, stated Plaintiffs were unopposed to the proposed Motion to Stay the Rule 26(f) Conference and all discovery pending resolution of the motions to dismiss. On October 13, 2016 at 11:14 a.m., Rik Munson stated that Plaintiffs are now opposed. An attempt was made to contact Defendant Amy Brunsting, however at the time of this filing, Defendant Amy Brunsting has not expressed her position. In light of her pending Motions to Dismiss, it is presumed by the undersigned that she is unopposed.

/s/ Cory S. Reed
Cory S. Reed

CERTIFICATE OF SERVICE

I certify that on the 13th day of October, 2016, a true and correct copy of the foregoing was served was served via the Court's ECF system , which constitutes service on all parties.

/s/ Cory S. Reed
Cory S. Reed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S ADOPTION AND JOINDER IN JILL WILLARD YOUNG'S MOTION TO STRIKE PLAINTIFFS' "ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT"

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, "Harris County Defendants") hereby file this Adoption and Joinder in Jill Willard Young's Motion to Strike Plaintiffs' "Addendum of Memorandum in Support of RICO Complaint" and would respectfully show the Court as follows:

1. Adoption of arguments raised in the Motion to Strike [Doc. 38].

In the interest of justice and judicial economy, and pursuant to FED. R. CIV. P. 10(c), the Harris County Defendants hereby adopt and incorporate by reference as if fully set forth herein, the arguments and authority contained in Jill Young's Motion to Strike [Doc. 38]. This Court should strike Plaintiffs' Addendum [Doc. 26], because it is not a valid supplemental or amended Complaint under FED. R. CIV. P. 15. Plaintiffs appear to concede they are not amending their Complaint, while at the same time attempting to incorporate facts from other pleadings in support of their Complaint [Doc. 26, ¶ 7]. Plaintiffs attempt, by this Addendum, to incorporate facts stated

in a Motion for Sanctions and a Motion for Relief under FED. R. CIV. P. 60 filed in a *closed* federal court file. *Id.*[1] This is not a proper pleading recognized by the Federal Rules of Civil Procedure. Accordingly, this Addendum should be stricken.

2. The Addendum does not challenge the merits of the Harris County Defendants' Motion to Dismiss.

Assuming *arguendo* the Court allows the Addendum in support of Plaintiffs' Complaint, it does not state any facts that would support a claim against the Harris County Defendants. Indeed, the facts contained in the Motion for Relief attached to the Addendum merely recite the facts previously complained of in the Complaint. Plaintiffs complain about being ordered to mediation with "another crony" [Doc. 26, ¶¶ 43, 99] and delay created by removing summary judgment motions from the docket [*Id.*, ¶¶ 39-42]. Plaintiffs' pleadings (Addendum included) fail to confer subject matter jurisdiction and fail to state a claim against the Harris County Defendants.

CONCLUSION & PRAYER

The Addendum filed is an improper pleading and should be stricken. Even assuming the Addendum is considered a supplement to Plaintiffs' Complaint, it does not change the fact that Plaintiffs have failed to establish the Court has subject matter jurisdiction or that they have properly stated a claim against the Harris County Defendants.

For the reasons set forth above, the Harris County Defendants request the Court grant the Motion to Strike the Plaintiffs' Addendum [Doc. 26], and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly

[1] *Candace Louise Curtis v. Anita Kay Brunsting*, ***closed*** Case No. 4:12-cv-00592 (J. Hoyt), [Doc. 112].

entitled.

Dated: October 13, 2016.

Respectfully Submitted,

/s/ Laura Beckman Hedge
Laura Beckman Hedge
Assistant County Attorney
ATTORNEY-IN-CHARGE
Texas State Bar No. 00790288
Federal Bar No. 23243
laura.hedge@cao.hctx.net
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5137
Facsimile: (713) 755-8924

ATTORNEY FOR DEFENDANTS, JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE

OF COUNSEL:

VINCE RYAN,
HARRIS COUNTY ATTORNEY

CERTIFICATE OF CONFERENCE

The undersigned certifies that on October 12, 2016, I emailed the Plaintiffs to inquire as to whether they would withdraw their Addendum. On October 13, 2016, Rik Munson responded and did not agree to withdraw it; therefore the relief sought in this Motion is necessary.

/s/ Laura Beckman Hedge
Laura Beckman Hedge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 13th day of October, 2016, via ECF.

Candace Louise Curtis
218 Landana Street
American Canyon, CA 94503

Jason Ostrom
Ostrom Morris LLP
6363 Woodway Drive, Suite 300
Houston, Texas 77057

Rik Wayne Munson
218 Landana Street
American Canyon, CA 94503

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Thompson Coe Cousins Irons
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Bobbie G. Bayless
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Anita Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904

Amy Brunsting
2582 Country Ledge Drive
New Braunfels, Texas 78132

/s/ Laura Beckman Hedge
Laura Beckman Hedge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

ORDER

The Court, having considered the various Defendants' Motions to Strike the Plaintiffs' Addendum of Memorandum in Support of RICO Complaint [Doc. 26] and the applicable law, finds the relief requested to be in order and therefore GRANTS the Motions. The Plaintiff's Addendum [Doc. 26] is hereby STRICKEN.

It is so ORDERED.

_____ _____

Date

The Honorable Alfred H. Bennett
United States District Judge

United States District Court
Southern District of Texas
FILED
OCT 11 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff,	§	Civil Action No. 4:12-cv-00592
v	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al Defendants	§	

Opposed Motion

Curtis, et al Plaintiffs	§	Civil Action No. 4:16-cv-01969
v	§	The Honorable Alfred Bennett
Kunz-Freed, et al Defendants	§	

Rule 42(a) Courtesy Copy

PLAINTIFF'S MOTION FOR CONSOLIDATION OF RELATED CASES PURSUANT TO 28 U.S.C. §1367, RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND LOCAL RULE 7.6 WITH SUPPORTING MEMORANDUM

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HISTORY AND NATURE OF THE PROCEEDINGS 4
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MEMORANDUM IN SUPPORT OF RULE 42(A) MOTION 8
BOTH ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT 9
A COURT HAS BROAD DISCRETION IN ORDERING CONSOLIDATION 10
CONCLUSION 11
STANDARD OF REVIEW 12
CERTIFICATE OF SERVICE 13
ORDER FOR CONSOLIDATION 14

17-20360.2692

Cases

American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co., 198 F.3d 1332, 1338 (11th Cir. 1999) 12

Atlantic States Legal Foundation Inc. v. Koch Refining Co., 681 F. Supp 609, 615 (D. Minn. 1988) 10

Batazzi v. Petroleum Helicopters, Inc., 664 F.2d 49, 50 (5th Cir. 1981) 9

Burke v. Smith, 252 F.3d 1260,1263 (11th Cir. 2001) 12

Central Motor Co. v. United States, 583 F.2d 470 (10th Cir. 1978) 9

Curtis v Brunsting 710 F.3d 406 ..... 5, 6, 7

Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985) 10

Huene v. United States, 743 F.2d 703, 704 (9th Cir. 1984) 10

Kramer v. Boeing Co., 134 F.R.D. 256 (D. Minn. 1991) 10

Marshall v Marshall 546 U.S. 293, 310 6

Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000) 12

U.S. v. White, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998) 11

United States v. City of Chicago, 385 F. Supp. 540, 543 (N.D. Ill. 1974 11

Wright & A. Miller, Federal Practice and Procedure, § 2381 (1971) 9

Statutes

28 U.S.C. §1367 ..... 2, 3, 11

Rules

Federal Rule of Civil Procedure 42(a) 2, 8, 9

Federal Rule of Civil Procedure 42(b) 9

Federal Rule of Civil Procedure 60(b) and (d) 4, 11, 12

Federal Rule of Civil Procedure Rule 11(b) 4

Federal Rules of evidence §201 7

Local Rule 7.6 ..... 2, 9

1. Above named Plaintiff respectfully moves this Court to order consolidation of the following cases pursuant to 28 U.S.C. §1367, Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6:

17-20360.2693

a. Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592 (TXSD Filed 2/27/2012) currently pending before the Honorable Kenneth Hoyt, and

b. Civil Action No. 4:16-cv-01969 currently pending before the Honorable Alfred H. Bennett (TXSD filed 7/5/2016)

2. Plaintiff moves for consolidation of pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal. The two cases are appropriate for consolidation for the following reasons:

3. The two cases share common parties. Candace Curtis is a Plaintiff in both federal suits and Amy and Anita Brunsting are Defendants in both suits.

4. The later suit is the cumulative product of events occurring in the course of litigating the earlier matter and although the remedies requested and the jurisdictions upon which the authorities of the Court have been invoked are divergent, all the facts flow from common acts and events.

5. The two cases involve common questions of law and fact because both arise from the same factual situation; namely, the rupture and looting of the Brunsting family of trusts and injuries resulting from the Defendants' efforts to evade accountability; and thus the two cases also involve common questions of law.

6. Through a series of awkward circumstances, the earlier diversity matter was remanded to Harris County Probate Court No. 4. The probate court experience produced evidence of a sinister design, resulting in the necessity for Plaintiff to again seek remedy in this Court and, thus, Plaintiff filed a separate action into the Southern District of Texas, Case No. 4:16-cv-01969, in

concert with Federal Rule of Civil Procedure Rule 11(b) motion for sanctions and with Federal Rule of Civil Procedure 60(b) and (d) motion for vacatur in the above titled Court.

7. While the earlier suit was a simple breach of fiduciary seeking disclosures and accounting, the later filed case is a Racketeer Influenced Corrupt Organization (RICO) suit brought under federal question jurisdiction, implicating the Probate Court's officers' participation in the conduct of an enterprise through a pattern of racketeering activity.

8. Judicial convenience and economy will be enhanced by consolidation of the actions.

9. Consolidation will result in one trial under one judge, which will bind all plaintiffs and defendants for all purposes. This will save time and avoid unnecessary costs to the Defendants, to the Plaintiffs in both actions, and to the witnesses who would otherwise be required to testify in two cases.

10. Consolidation will not delay final disposition of any matter.

11. Consolidation of these two cases will promote the uniformity of decision and eliminate any potential for conflicting rulings, provide for judicial economy and the convenience of witnesses and parties, and will promote the expeditious disposal of all matters.

HISTORY AND NATURE OF THE PROCEEDINGS

12. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl, Carole, Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al, per stirpes.

13. Plaintiff Candace Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.[1]

14. Plaintiff Curtis complaint was dismissed under the probate exception to federal diversity jurisdiction and Curtis appealed. The Fifth Circuit reversed and Ordered remand on January 9, 2013.

15. On January 29, 2013, attorney Bobbie Bayless filed suit against Nelva Brunsting's trust attorneys, Candace Kunz-Freed, Albert Vacek Jr. and Vacek & Freed P.L.L.C., in the Harris County District Court on behalf of Carl Brunsting as executor of the estate of Nelva Brunsting[2] raising claims only related to the Brunsting trusts then in the custody of a federal court.

16. On April 9, 2013, this Honorable Court issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's prior approval.

17. Also on April 9, 2013, Bobbie Bayless filed suit in Harris County Probate Court No. 4, on behalf of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) naming federal Plaintiff Curtis a "Nominal Defendant" in both suits.

18. Not only did Bayless advance claims exclusively related to the trusts already in the custody of the federal Court, she claimed the breaches of fiduciary against the beneficiaries of the Brunsting trusts were claims belonging to the estate of Nelva Brunsting. That theory was disposed of in the Fifth Circuit in *Curtis v Brunsting 710 F.3d 406*. The "Trust(s)" is the only heir in fact to the estate and assets in the trusts are not property of the estate of Nelva Brunsting.

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[1] No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; USDC for the Southern District of Texas, Houston Division

[2] No. 2013-05455; Carl Henry Brunsting as Executor of the Estate of Nelva Brunsting v. Candace Freed and Vacek & Freed P.L.L.C.; 164TH Judicial District Court of Harris County, Texas.

19. At paragraph 1, page 2 of Curtis v Brunsting 710 F.3d 406:

> *In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust. Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.*

20. Under the wills Carl Brunsting has no standing to bring claims against trustees as heir or executor of an estate. He only has standing to bring claims individually as a trustee or beneficiary of the trust and that trust was in the custody of the federal court.

21. In Curtis v Brunsting the Fifth Circuit explained the doctrine of comity by citing to the Supreme Court's clarification of the "distinctly limited scope" of the probate exception,[3] explaining:

> *[W]e comprehend the 'interference' language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.*[4]

22. In or about November of 2013, Pro se Plaintiff Curtis retained the services of Houston Attorney Jason Ostrom. On May 15, 2014, Attorney Jason Ostrom caused this Honorable Court to issue an Order for Remand of Curtis v Brunsting to the custody of Harris County Probate Court No. 4 (412,249-402) for consolidation with the claims of Carl Brunsting (412,249-401).

---

[3] Marshall v Marshall 546 U.S. 293, 310
[4] Marshall v Marshall 546 U.S. 293, 311–12

23. On July 5, 2016, Plaintiff Curtis, along with her domestic partner Rik Munson, both individually and as private attorneys general on behalf of the public trust, filed a RICO suit into the United States District Court for the Southern District of Texas, Houston Division (No. 4:16-cv-01969), accusing the Harris County Probate Court and its officers of public corruption conspiracies involving schemes and artifices to deprive Plaintiff Curtis, the People of Texas, and others, of the honest services of an elected public official.

24. The record will show the Probate Court has refused to resolve any substantive matter on the merits and the reason is clearly that no court can assume in rem jurisdiction over a res in the custody of another court. Thus, the probate court never had jurisdiction over the Brunsting trust, which renders the Order for remand to the state probate court void ab initio.

25. Rather than dismiss and return Curtis v Brunsting to the federal court, the RICO Defendants chose a less honorable course, forcing Plaintiff Curtis to respond accordingly.

26. On August 3, 2016, Plaintiff Curtis filed a F.R.C.P. Rule 11(b) motion for sanctions and F.R.C.P. Rule 60(b) and (d) motions for vacatur of the remand to state court, on the ground that the remand was obtained by fraud upon Plaintiff Curtis and upon the Court, thus vitiating the application to amend the original petition that facilitated the remand in the first instance.

27. Plaintiffs respectfully request this Honorable Court take Judicial Notice of the complaint, motions to dismiss and Plaintiffs' replies in the closely related proceedings pursuant to Federal Rules of evidence §201.[5]

STAGE OF THE PROCEEDINGS

28. The RICO suit is in the opening phase and the initial conference is set for October 28, 2016 at 9:00 a.m. before the Honorable Alfred Bennett.

[5] Case 4:16-cv-01969 TXSD Motions to dismiss Dkt 19, 20, 23, 25 and replies Dkt 33, 34, and 41

29. The earlier breach of fiduciary matter, Candace Curtis v. Anita and Amy Brunsting 4:12-cv-00592, is ripe for F.R.C.P. Rule 12(c) relief on the unresolved summary and declaratory judgment pleadings. Those motions have not been answered and the probate court refused to set the motions for hearing. A proper determination on the merits of those unresolved motions will be necessary to support the racketeering conspiracy and predicate act claims arising under the later filed RICO suit.

30. Plaintiff hereby incorporates by reference the Rule 11[6] and 60[7] motions referred to in item 18 supra, and the federal civil RICO complaint referred to in item 17 supra, as if fully restated herein, and further asks this Honorable Court to take Judicial notice of the relevant public records.

MEMORANDUM IN SUPPORT OF RULE 42(A) MOTION

31. Above named Plaintiff has moved this Court, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, to consolidate the following cases: Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, No. 4:12-CV-00592 (TXSD Filed 2/27/2012) and Curtis, et al. v Kunz-Freed, et al, No. 4:16-cv-01969 (TXSD Filed 07/05/16).

32. Plaintiffs' motion requests consolidation for the limited purposes of pre-trial proceedings and trial only, it does not request consolidation for the purposes of judgment or rights to appeal.

33. Rule 42(a) of the Federal Rules of Civil procedure provides:

> *Rule 42. Consolidation; separate trials.*
>
> *(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it*

[6] Case 4:12-cv-00592 Document 120 Filed in TXSD on 08/05/16
[7] Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16

may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

34. The purpose of Rule 42(a) "is to give the court broad discretion to decide how cases on its docket are to be tried so that the business of the court may be dispatched with expedition and economy while providing justice to the parties." *Wright & A. Miller, Federal Practice and Procedure, § 2381 (1971).*

35. Local Rule 7.6 and Federal Rule of Civil Procedure 42(a) requires the motion be filed in the earlier Court and the above Court is the earlier Court. However, Federal Rule of Civil Procedure 42(b) prevents consolidation, when doing so would pollute diversity and deprive the Court of jurisdiction.

36. The earlier matter was filed under diversity with the allegation that Defendants were acting in secret and were uniquely in exclusive possession of all of the information relating to the case.

37. Plaintiff Curtis submitted a First Amended Complaint in the above Court on April 29, 2013, seeking to amend the claim to federal question jurisdiction based upon newly discovered evidence involving fraudulent securities transfers. That amendment was properly rejected by the Court due to Plaintiff's failure to provide a certificate of conference as required by local rule.

BOTH ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT

38. Rule 42(a) permits a district court to consolidate separate actions when they involve "a common question of law or fact." Fed.R.Civ.P. 42(a).

39. Even if there are some questions that are not common, consolidation is not precluded. *Batazzi v. Petroleum Helicopters, Inc., 664 F.2d 49, 50 (5th Cir. 1981); See Central Motor Co. v. United States, 583 F.2d 470 (10th Cir. 1978).*

40. Common questions of law and fact abound in these cases, as both stem from the same (long con) conspiracy and the later controversy is based upon evidence evolving out of Defendants' continued attempts to foreclose remedy in the trust suit case, aided and abetted by the state court and its officers.

41. It was the process of seeking remedy and Defendants' continued efforts to obstruct justice and evade accountability, that has produced a clear picture of a larger mosaic involving a pattern of racketeering activity targeting familial wealth.

42. Although the lawsuits were filed at separate times and in separate forums, and although multiple actions were improperly brought in state courts, all of it is, in fact, only one continuous event and therefore, it necessarily follows that the matter is particularly appropriate for consolidation.

A COURT HAS BROAD DISCRETION IN ORDERING CONSOLIDATION

43. A court has broad discretion in determining whether consolidation is practical. *Atlantic States Legal Foundation Inc. v. Koch Refining Co., 681 F. Supp 609, 615 (D. Minn. 1988).* In exercising this discretion, a court should weigh the time and effort consolidation would save, with any inconvenience or delay it would cause. *Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985); Huene v. United States, 743 F.2d 703, 704 (9th Cir. 1984). See also Kramer v. Boeing Co., 134 F.R.D. 256 (D. Minn. 1991).*

44. Consolidation offers efficiency and convenience in this case. Consolidation will result in one trial which will bind all plaintiffs and defendants. This will save time and avoid unnecessary costs to the defendants, the plaintiffs, this Court, and the witnesses who would otherwise be required to testify in both cases.

45. Consolidation will not delay the disposition of this case. In fact, it will minimize delays. The cases are at different stages of the discovery process, but this does not bar consolidation. (*United States v. City of Chicago, 385 F. Supp. 540, 543 (N.D. Ill. 1974*).

46. The earlier case was filed under diversity, but evidence discovered in the course of pursuing remedy has produced racketeer influenced corrupt organization claims under federal question jurisdiction and the record will show No. 4:12-cv-00592 has been brought back to the federal court in direct response to the probate court's unwillingness to ensure Plaintiff's right to be heard and blatant refusal to resolve any matter on the merits.

47. Consolidation is necessary to the ends of justice and for complete resolution of all matters for all parties and, whereas, the rules will not allow all of the related cases and necessary parties to be consolidated under diversity jurisdiction, all of the related cases and necessary parties can and should be consolidated under federal question jurisdiction pursuant to 28 U.S.C. §1367.

48. Thus, whether the economy and efficiency of the Court will best be served by transferring the federal question suit to this Honorable Court or by transferring the diversity case to Judge Bennett's Honorable Court, Plaintiffs' do not presume to suggest, but do believe that justice can only be served by consolidation of all related matters under one roof for all purposes.

CONCLUSION

49. Jurisdiction of the probate court at the point in time when its jurisdiction was invoked, is a proper subject of inquiry under Rule 60. "Courts can always consider questions as to subject matter jurisdiction whenever raised and even sua sponte." *U.S. v. White, 139 F.3d 998 cert den 119 S.Ct 343, 525 U.S. 393, 142 L.Ed.2d 283 (1998).*

50. The remand Order is void ab initio for want of jurisdiction in the state court. Want of, and acts excess of, subject matter jurisdiction can never be cured after the fact. Furthermore,

Plaintiff Curtis was named a nominal defendant in the estates probate suit and simply cannot be consolidated with a plaintiff that has named her a defendant in the same lawsuit.

STANDARD OF REVIEW

51. Rule 60(b) motions are reviewed for abuse of discretion. *American Bankers Ins. Co. v. Northwestern Nat'l Ins. Co., 198 F.3d 1332, 1338 (11th Cir. 1999); Toole v. Baxter Healthcare Corp., 235 F.3d 1307, 1316 (11th Cir. 2000).*

52. However, motions under Rule 60(b)(4), on the ground that a judgment is void are reviewed de novo. *Burke v. Smith, 252 F.3d 1260,1263 (11th Cir. 2001).*

WHEREFORE, Petitioner respectfully requests the motion for consolidation be granted.

Respectfully submitted,

October 5, 2016

Candace L. Curtis

CERTIFICATE OF CONFERENCE

I certify that I have communicated with Defendants and they are opposed to the relief requested herein.

Candace L. Curtis

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 5th day of October, 2016, on the following via email and deposit in USPS Priority Mail:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

Attorney for Amy Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

Attorney for Anita Brunsting

I hereby certify that a true and correct courtesy copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on all parties this 5th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

Candace L. Curtis

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS Plaintiff	§	
	§	Civil Action No. 4:12-cv-00592
v	§	
	§	The Honorable Kenneth Hoyt
ANITA KAY BRUNSTING, et al Defendants	§	

Curtis, et al Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al Defendants	§	

ORDER FOR CONSOLIDATION

Upon consideration, the Motion for Transfer and Consolidation for pre-trial proceedings and trial, but not consolidation for the purposes of judgment and appeal (Doc. No.___), filed by Plaintiff in Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, Civil Action No. 4:12-CV-00592, is hereby Granted.

The following actions are hereby consolidated for pre-trial proceedings and trial only: Civil Action No. 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting and Amy Ruth Brunsting, (Filed TXSD 2/27/2012) and Civil Action No. 4:16-cv-01969 Curtis et al., v Kunz-Freed et al (Filed TXSD 7/05/2016).

All depositions, interrogatory responses, materials produced in response to requests for production, and responses to requests for admissions in any of these actions may be used in any

other action consolidated by this Order. All notices, requests, responses, motions and other filings relating to pretrial proceedings must be served on all counsel in each of these actions and bear the case caption for each action that has been consolidated pursuant to this order.

SO ORDERED

Date: _____, 2016

_____
The Honorable Kenneth Hoyt
United Stated District Judge

17-20360.2706

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis et al.,	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:16-CV-01969
v.	§	
	§	The Honorable Alfred Bennett
Kunz-Freed et al.,	§	
Defendants	§	

Plaintiffs' Answer to Defendant Steven Mendel's Motions to Dismiss (Dkt 36) Pursuant to Federal Rules of Civil Procedure 12(b)(6)

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I. INTRODUCTION

1. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas individually and as private attorneys general alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement incorporated into the RICO complaint by reference in response to Defendants Albert Vacek, Jr. and Candace Kunz-Freed's September 7, 2016 motions to dismiss (Dkt 19 and 20) claiming a want of specific factual allegations and other affirmative defenses.

3. On September 30, 2016, Defendant Steven Mendel filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), (Dkt 36).

4. Mr. Mendel's motion also states that it is filed on behalf of Defendant Bradley Featherston. However, Mr. Featherston has refused to accept service and has not filed his waiver.

II. THE ISSUES

A. Defendant Steven Mendel advances the Texas doctrine of attorney immunity;

B. States that he never had an attorney-client relationship with either of the plaintiffs;

C. States that he only served as attorney in the defense of co-trustee Anita Brunsting involving a "*related probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, Estate of Nelva Brunsting, Deceased";*

D. States that the allegations are vague, conclusory and fail to provide him with sufficient notice;

E. That Mr. Mendel is current counsel for Co-Trustee Anita Brunsting;

F. That it is impossible for him and Mr. Featherston to have been involved in a sham mediation because no mediation occurred.

G. Mendel, like Anita and Amy Brunsting, introduces a new appellation for the "extortion instrument" not previously found in any pleadings called a Qualified Beneficiary Trust or "QBT".

III. SUMMARY OF THE ARGUMENT

Jurisdiction

5. Each Defendant's motion to dismiss has thus far argued that the case before the court arises from a "probate matter" involving administration of an estate.

6. Plaintiffs challenge any claim of state court jurisdiction over Brunsting trust related matters. All of these Defendants' claims, including immunity, turn on inquiry into subject matter jurisdiction.

Metamorphosis

7. Plaintiff Candace Louise Curtis began this journey in the Southern District of Texas February 27, 2012 (4:12-cv-592). From there it evolved into a Fifth Circuit Appeal (12-20164) and returned to the Southern District of Texas January 9, 2013 (704 F.3d 406).

8. From there, Defendant Jason Ostrom arranged a remand to Harris County Probate Court No. 4, (first as 412249-402, then as 412249-401). Once in the probate court the Curtis v Brunsting trust litigation was mysteriously transformed into the "Estate of Nelva Brunsting" (Exhibit 1 and Dkt 34-9) and thereafter completely dissolved into the abyss like the docket control order and the scheduled trial that disappeared just as mysteriously.

IV. CURTIS V BRUNSTING SURVIVED THE PROBATE EXCEPTION, IS NOT A PROBATE MATTER AND HAS NOTHING TO DO WITH THE ADMINISTRATION OF ANY ESTATE

9. The Fifth Circuit Court of Appeals in *Curtis v Brunsting 704 F.3d 406*, 409-410, held,

> *No. 12-20164*
>
> *In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At*

> *the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.*
>
> *Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.*
>
> *HN6 Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate. In other words, because 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.*
>
> *HN7 Any property held in a revocable living trust is not considered a probate asset. Avoidance of probate perhaps is the most publicized advantage of the revocable living trust. Assets in a living trust are not subject to probate administration*

10. Curtis v Brunsting has been held not to be litigation related to the Estates of Elmer or Nelva Brunsting. Plaintiff Curtis is a beneficiary of inter vivos trusts and not an heir to either Estate, to which "The Trust" is the only heir in fact (Dkt 41-2 and 41-3).

Immunity

11. All immunity defense claims turn on the question of subject matter jurisdiction.

12. Mendel claims he only served as an attorney in the defense of "co-trustee" Anita Brunsting, in litigation involving a "*probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, Estate of Nelva Brunsting, Deceased"* and, thus, claims the protection of the Texas Attorney Immunity Doctrine.

13. While refusing resolution on the merits, these Defendants, in concert, attempted to intimidate Plaintiff Curtis into agreeing to mediate, to avoid rendering unfavorable determinations that would have subjected the Court's want of jurisdiction to scrutiny.

14. The effort to avoid the obvious want of jurisdiction in the probate court, and the deliberate attempts to imposter jurisdiction while avoiding determination on the merits, cannot rationally be denied as is firmly evidenced in the transcript of March 9, 2016. (Dkt 26-16)

15. Defendants portray this conduct as judicial and litigious, but it is neither and the conduct is evidenced by the various, self-authenticating, court records.

16. Defendants have attempted to overturn the federal Fifth Circuit after being on the losing end of a fully litigated federal appellate determination and have since attempted to erase the federal court rulings and the federal injunction, by subterfuge.

17. "The Trust" was inarguably under the in rem jurisdiction of a federal Court when related claims were filed in state courts in Harris County Texas in the name of the Estates of Elmer and Nelva Brunsting. (Dkt 34-5 and 34-7)

18. Mr. Mendel does not provide any exhibits to support his claims and Plaintiffs are unaware of any instance in which Mr. Mendel or anyone associated with his firm filed an appearance, filed a motion or filed a responsive pleading in "Curtis v Brunsting".

19. Defendants can only show they filed motions and pleadings in the "Estate of Nelva Brunsting" and even when cases are consolidated for all purposes they do not lose their separate identities. What happened to Curtis v Brunsting after the remand to state probate court?

"Curtis v Brunsting" vs. "Estate of Nelva Brunsting"

20. There are neither trustees nor beneficiaries involved in any "Estate" litigation and there are neither heirs nor executors nor inheritance expectancies involved in any "trust" related litigation. The alleged co-trustees only exist in the context of "the trust" and, as it relates to the estate, the trust is the only heir in fact.[1]

21. As previously shown (Dkt 41, ln 25) Candace Curtis' breach of fiduciary lawsuit against Anita and Amy Brunsting filed in the federal court on February 27, 2012, involves only the Brunsting trusts Curtis v Brunsting 704 F.3d 406, 409-410 (Dkt 26-17). Defendant Mendel cannot show where he ever responded to a Curtis v Brunsting motion (Dkt, 26-11, 26-14) even though all they ever addressed in the "estate of Nelva Brunsting" pleadings were the money cow trusts (Dkt 26-5, 6, 8, 9, 10, 13, 20).

22. The pleadings filed by Jason Ostrom in the probate court all bear the heading of "Estate of Nelva Brunsting" except notices of the federal pleadings and each of those bears an "Estate of Nelva Brunsting" cover page.

Jurisdiction

23. Because the trust res was under the in rem jurisdiction of a federal court when the estate lawsuit was filed in Harris County Probate 4, none of the Trust related claims were properly placed before that court.

24. As noted, the trust is the only heir to either estate and Carl Brunsting has no individual standing to bring any estate claims other than to challenge the wills, which he did not.

[1] Dkt 41-2 and 41-3 Wills of Elmer and Nelva Brunsting

25. When we strip away Trust related claims from Bayless' "Estate" complaint nothing remains of the estate lawsuit. All of Bayless probate court claims involve the Trust and nothing but the Trust.

26. Even the District Court suit against Freed was filed in a court that could not take cognizance of a res in the custody of the federal Court and although an argument could validly be made against Vacek and Freed in the name of Elmer and Nelva Brunsting's Estates, they would none-the-less need to have been brought in the court having jurisdiction over the res. The question of whether or not the heir-in-fact Trust was the real party in interest and not the Estates would also need to be resolved.

27. A proper consolidation motion would have Curtis v Brunsting at the top in the heading, with the later filed cases each listed separately below that, one atop the other. Defendants instead chose to play the trust buster game of dissolving the distinctions between trust and estate.

28. They claim there was no conspiracy, but how do they explain the inarguable existence of public records evidencing these facts?

29. Want of subject matter jurisdiction in the probate court over any trust related matters strips these defendants of their attorney immunity defense and their conduct is subject to scrutiny in these proceedings, unclothed in the a priori illusion of legitimacy.

Notice and Meaningful Opportunity to Be Heard

30. The cornerstone of Due Process is fundamental fairness. Inherent in the notion of fairness is the right to know the nature and cause of an action, to be apprised of the claims and to have a meaningful opportunity to defend by way of answer or explanation. This is the essence of Rule

12(b)(6). It is not necessary that Defendant understand the law or the elements of a RICO claim, but need only be apprised of the facts that Plaintiff relies upon for their claim.

31. In his Rule 12(b)(6) motion Mendel claims the complaint fails to apprise him of sufficient facts to provide him with notice, while at the same time claiming to act as counsel for opposing litigants with extensive knowledge of contrary facts.

32. It is difficult to conceive of how Mr. Mendel could have insufficient notice of facts when Plaintiffs, in response to motions making similar claims, simply point to public records in the very same actions Mr. Mendel claims to have been involved in as an attorney.

Creative Pleading and Something Called a "QBT"

33. Mr. Mendel's Rule 12(b)(6) Motion, like Anita and Amy Brunsting's, introduces for the first time in any pleadings, in any related action in any court, over a period of nearly five years, introduces something they call a "Qualified Beneficiary Trust" (QBT) allegedly drafted by Defendant Albert Vacek, Jr.

34. Defendants do not provide exhibits in support of this claim of facts and Docket entries 30, 35 and 36 are the only pleadings to be found in any court containing reference to a "QBT".

35. Plaintiffs' RICO complaint defines the "extortion instrument" at Claim number 24 paragraph 133, as *"the heinous 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (hereinafter the "8/25/2010 QBD" or "Extortion Instrument")"*.

36. One of the three versions of the 8/25/2010 QBD was filed by Defendant Anita Brunsting's Counsel Bradley Featherston in the Estate of Nelva Brunsting 412249-401, on

December 8, 2014, and is included in the Addendum to Plaintiffs' RICO complaint with the other versions, Dkt 26-20 at E1349-E1386.

37. Plaintiffs' demand these Defendants produce this "QBT" and certify it for whatever it is they are claiming it to be and, while they are at it, Plaintiffs' demand they produce the 8/25/2010 QBD, the instrument referred to by Defendants Amy, Anita, Brad and Neal, in their joint June 26, 2015 no-evidence motion for partial summary judgment, and qualify it as evidence for whatever they claim it to be as well.

Intimidation with the Extortion Instrument

38. As stated in the Addendum, on June 26, 2015 Defendants Anita and Amy Brunsting, through their attorneys, Bradley Featherston and Neal Spielman, filed a "No-Evidence Motion for Partial Summary Judgment" (DKT 26-5) involving an instrument called "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" or "QBD".

39. Plaintiff Curtis responded by filing an "Answer with Motion and Demand to Produce Evidence" (Dkt 26-11). As the Addendum states, Defendants tried to make good on their "no-contest clause" extortion threats when they filed their Joint No-Evidence Motion for Partial Summary and Declaratory Judgement (Dkt 26-5) and then removed their no-evidence motion from calendar, with their tail between their legs, when Plaintiff Curtis filed her answer and demand to produce the archetype of the instrument. (Dkt 26-11).

40. Suddenly there is no more docket control order, no more dispositive motion hearings and no more trial date, allegedly because of an "emergency Motion" over the "dissemination" of illegal wiretap recordings by Anita Brunsting's counsel Bradley Featherston.

41. Neal Spielman and Stephen Mendel then show up on March 9, 2016 (Dkt 26-16 Transcript) waiving the Gregory Lester/Jill Willard Young report in the air (Dkt 26-9) and talking about how the no contest clause in the illicit QBD instrument had been held to have been validly drafted by Vacek & Freed, (according to the Gospel of Jill Willard and Gregory Lester), and that Plaintiffs Candace Curtis and Carl Brunsting would take nothing if the court were to rule on the no contest clause. It is literally impossible to view any of that as an estate matter.

42. Mr. Mendel was personally present at the September 10, 2015 hearing on Gregory Lester's application for authority to retain Jill Young and was personally present at the March 9, 2016 hearing scheduled as a result of Plaintiff Curtis request to have dispositive motions placed back on the hearing calendar (Dkt 26-15 Request for Hearing).

43. The only thing indisputable in that transcript of hearing (Dkt 26-16) is that every effort was made to pretend the court had jurisdiction, to avoid setting dispositive motions, to avoid producing the extortion instrument and determination on the merits, to avoid joinder of closely related cases, and to attempt intimidation to cause Plaintiff Curtis to think she needed to get out her check book to pay for a mediation to avoid taking nothing under the "no contest clause" of the heinous "QBD" extortion instrument Defendants refuse to produce. (Dkt 26-16)

44. It was Carole Brunsting and not Plaintiff Curtis who cancelled the scheduled mediation (Exhibit 2)

45. The Defendants have had almost five years to produce their precious "QBD" and after having refused or otherwise failed to do so, it has somehow become a "QBT".

46. The United States Attorney's Criminal Resource Manual CRM 2403 defines Extortion by Force, Violence, or Fear as follows:

> *In order to prove a violation of Hobbs Act extortion by the wrongful use of actual or threatened force, violence, or fear, the following questions must be answered affirmatively:*
>
> 1. *Did the defendant induce or attempt to induce the victim to give up property or property rights?*
> 2. *Did the defendant use or attempt to use the victim's reasonable fear of physical injury or economic harm in order to induce the victim's consent to give up property?*

47. Both of these inquiries are answered by the transcript of the March 9, 2016 status conference, set because of Plaintiffs Curtis' request for setting. (Dkt 26-15)

48. Defendants Anita and Amy Brunsting and now Stephen Mendel have all filed motions to dismiss under Rule 12(b)(6), (Dkt 30, 35, 36) claiming they "believe" the instrument referred to as the extortion instrument is some Qualified Beneficiary Trust or "QBT".

Mediation

49. The chronology of events provided in the Addendum to Plaintiffs' complaint (Dkt 26) beginning at Item VIII, ln. 62, pg. 12, shows the sequence of events compelling Plaintiffs to bring claims involving impartial forum, access to the court and other due process, civil rights, fraud and related racketeering claims.

50. As the Complaint makes clear in Claims 16-21, illegal wiretap recordings were disseminated by certified mail (July 2015), among counsel for the parties to the Brunsting related lawsuits, after Defendants filed their June 26, 2015 no evidence motion (Dkt 26-5). There was no perceivable legal relationship between those recordings and any substantive matter then pending.

51. Dissemination of the recordings was none-the-less used as the excuse for suspending the litigation after Defendants had set their no-evidence motion for hearing and after Bayless had set her summary judgment motion for hearing, but were then used as an excuse to remove summary

judgement hearings and trial, without notice, without hearing and without an order, after Plaintiff Curtis filed her Answer and Demand to Produce Evidence (Dkt 26-11).

52. Suddenly, an emergency motion involving dissemination of irrelevant and illegally obtained private telephone communications replaces meritorious resolution of the controversy, and there is no evidentiary support for any scheduling changes in the record.

Wiretap Recordings

53. All three Defendants, Anita, Amy and Mendel offer a completely different version of the facts regarding wiretap recordings from that contained in the Complaint, as verified by the probate court record. As with all of the contrary factual assertions made by these Defendants, they do not provide any form of affidavit or exhibits in support of their claims.

54. Plaintiff Curtis' wiretap brief gives the lie to these claims (Exhibit 3 attached) as does Defendant Anita and Amy Brunsting's reply to Carl Brunsting's Emergency Motion for a Protective Order (Dkt 26-8). The other exhibits in the record relating to the wiretap recordings are Dkt 26-6-Carl Brunstings motion for protective order and, Dkt 26-12- transcript of protective order hearings.

V. DEFENDANT DISPLAYS A PENCHANT FOR ARGUING HIS OWN MISSTATEMENTS

55. Defendant Mendel misstates the Complaint and then makes facially-compelling arguments against the fallacy of his own claims (Dkt 36 Pg. 1, Ln. 1.2):

> *"By way of example and not as a limitation, Mr. Featherston is alleged to have engaged in illegal wiretapping"*

56. Mr. Mendel does not quote any part of the Complaint nor does he reference any particular provisions of the Complaint with specificity. The claims relating to wiretap activity are numbered 16-21. Claims 16-19 specifically allege "manipulation" occurring in February of 2015 regarding four different recording segments, while claims 20 and 21 allege "in Concert Aiding and Abetting: Spoliation, Destruction and/or Concealing Evidence".

57. While Mendel would lead the Court to believe the Complaint alleges Featherston was involved in the recordings themselves, the Complaint makes no such claim and no such claim is necessary to a claim of aiding and abetting.

58. The act of placing those recordings in the U.S. Mail amounts to participation, as those recordings were used in a conspiracy to deprive Plaintiff Curtis of the honest services of a court.

59. The RICO allegations include statements such as that contained in claim 21 at paragraph 129:

> *Implicit in the assertion the recordings were relevant and the content admissible, Defendants claimed to possess personal knowledge that: "(1) the recording device was capable of recording the events offered in evidence; (2) the operator was competent to operate the device; (3) the recording is authentic and correct; (4) changes, additions, or deletions have not been made in the recording; (5) the recording has been preserved in a manner that is shown to the court; (6) the speakers on the tape are identified; and (7) the conversation elicited was made voluntarily and in good faith, without any kind of inducement."*

60. Mendel however, at paragraph 1.2, refers to such statements as vague, speculative, and conclusory and based upon inference, which more accurately describes the motion to dismiss than the complaint.

61. Another example of Mendel's proclivity for arguing his own misstatements is paragraph 127 as follows:

> *On or about July 1, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendants Anita Brunsting and Bradley Featherston, aided and abetted by persons known and unknown to Plaintiffs and aiding and abetting persons known and unknown to Plaintiffs, did unlawfully, willfully and knowingly cause illegal wiretap recordings of private telephone conversations between Carl Brunsting and his wife Drina Brunsting, to be delivered by certified mail to Plaintiff Curtis and the third party attorneys for parties in multiple pending lawsuits, in violation of 18 U.S.C. §2511(1)(c) and Texas Penal Code 16.02. The illegal wiretap recordings selectively disseminated on CD-ROM, are believed to have been made on or about March and April 2011. The CD contained items which were Bates numbered 5814 to 5840. Included among those items were the following four audio recordings:*[2]

62. One is curious to know where Mendel gets the notion Featherston is "*alleged to have engaged in illegal wiretapping"*? Dissemination of illegally obtained wiretap recordings violates the wiretap laws, and is the actual participation Mr. Featherston is accused of.

The Estate of Nelva Brunsting

63. As has been shown, the Fifth Circuit (Dkt 34-4) distinguished between the Brunsting Trust litigation and any prospective probate of the Estates of Elmer or Nelva Brunsting, using the same information available to the probate court, "the Wills of Elmer and Nelva Brunsting" (Dkt 41-2 and 41-3) and in their analysis the Fifth Circuit determined that Brunsting trust assets were not property of either estate and that the trust was in fact the only estate heir.

The Brunsting Trusts

64. Plaintiff Curtis is a beneficiary of an inter vivos trust, not an heir to any estate.

65. Plaintiff Curtis' beneficial interest is property, not an inheritance or expectancy.

66. The estate has no standing to bring claims against beneficiaries of the trust, alleging trespass against the heir in fact (trust), simply because the alleged trespass occurred during the

[2] Excerpted from Carl Brunstings Motion for Protective Order filed July 17, 2015.

lifetime of a grantor. The trust was also in the custody of the federal Court when all of the state court actions were filed.

VI. STANDARD OF REVIEW

67. Rule 12(b)(1) permits the dismissal of an action for the lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "If [a federal] court determines at any time that it lacks subject-matter jurisdiction, [it] must dismiss the action." Fed. R. Civ. P. 12(h)(3); *see also Berkshire Fashions, Inc. v. M V. Hakusan II,* 954 F.2d 874, 880 n.3 (3rd Cir.1992) (citing *Rubin v. Buckman,* 727 F.2d 71, 72 (3d Cir. 1984)) (reasoning that "[t]he distinction between a Rule 12(h)(3) motion and a Rule 12(b)(1) motion is simply that the former may be asserted at any time and need not be responsive to any pleading of the other party.") Since federal courts are considered courts of limited jurisdiction, absent jurisdiction conferred by statute, they lack the power to adjudicate claims. *See, e.g., Stockman v. Fed Election Comm'n,* 138 F.3d 144, 151 (5th Cir. 1998) (citing *Veldhoen v. United States Coast Guard,* 35 F.3d 222, 225 (5th Cir. 1994). Therefore, the party seeking to invoke the jurisdiction of a federal court carries "the burden of proving subject matter jurisdiction by a preponderance of the evidence." *Vantage Trailers, Inc. v. Beall Corp.,* 567 F.3d 745, 748 (5th Cir. 2009) (citing *New Orleans & Gulf Coast Ry. Co. v. Barrois,* 533 F.3d 321, 327 (5th Cir. 2008); *see also Stockman,* 138 F.3d at 151.

68. In this case, jurisdiction is challenged under both Rule 12(b)(1), and the lack of sufficient factual allegations under Rule 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) authorizes a defendant to move to dismiss for "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). Under the demanding strictures of a Rule 12(b)(6) motion, "[t]he plaintiff's complaint is to be construed in a light most favorable to the plaintiff, and the

allegations contained therein are to be taken as true." *Oppenheimer v. Prudential Sec., Inc.,* 94 F.3d 189, 194 (5th Cir. 1996) (citing *Mitchell v. McBryde,* 944 F.2d 229, 230 (5th Cir. 1991)). Dismissal is appropriate only if, the "[f]actual allegations [are not] enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L.Ed.2d 929 (2007).

69. In light of Federal Rule of Civil Procedure 8(a)(2), "[s]pecific facts are not necessary; the [factual allegations] need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Erickson v. Pardus,* 551 U.S. 89, 93, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (per curiam) (quoting *Twombly,* 550 U.S. at 555, 127 S.Ct. at 1964. Evenso, "a plaintiffs obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555, 127 S. Ct. at 1964- 65 (citing *Papasan v. Allain,* 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L.Ed.2d 209 (1986).

70. Therefore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed.2d 868 (2009) (quoting Twombly, 550 U.S. at 570, 127 S. Ct. at 1974). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556, 127 S. Ct. at 1955). "But where the well-pleaded facts do not permit the court to infer more than the mere

possibility of misconduct, the complaint has to alleged-but it does not have to 'show -'that the pleader is entitled to relief.'" Ashcroft, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

71. Nevertheless, when considering a 12(b)(6) motion to dismiss, the Court's task is limited to deciding whether the plaintiff is entitled to offer evidence in support of his or her claims, not whether the plaintiff will eventually prevail. Twombly, 550 U.S. at 563, 1969 n.8 (citing Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed.2d 90 (1974)); see also Jones v. Greninger, 188 F.3d 322,324 (5th Cir. 1999).

VII. CONCLUSION

72. The Honorable Kenneth Hoyt stated at the injunction hearing April 9, 2013 that all that was needed to wrap the trust litigation up was to distribute the assets, and he was correct.

73. Defendants Anita and Amy Brunsting refuse to horror any of the duties of the office while their attorneys use the 8/25/2010 QBD to threaten Plaintiff Curtis and her disabled brother Carl Brunsting with loss of property rights for bringing action to protect those rights and compel specific performance. Each of these Defendant attorneys fully intended to line their own pockets with filthy lucre at the expense of Plaintiff Curtis, her sister Carole, and her disabled brother Carl.

74. Probably the most alarming aspect of all this is that in a situation where the probate court actually had jurisdiction the exact conduct complained of here would all too often be granted Judicial and Texas Attorney Immunity without resort to the canons to consider whether such conduct is in fact judicial or litigious.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Motion to Dismiss (Dkt 36) filed by Defendant Stephen Mendel, September 30, 2016.

Respectfully submitted October 14, 2016,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 13th day of October, 14 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson
Rik W. Munson

The purpose for creating an inter vivos trust is to keep attorneys from stealing assets under the usual probate charade. These attorneys with the blessings of the Probate Court have tried to erase those distinctions hoping to convert assets of the trust into assets involved in a controversy over the administration of an estate.

DV

DATA-ENTRY
PICK UP THIS DATE

FILED
2/5/2015 2:47:28 PM
Stan Stanart
County Clerk
Harris County

PROBATE COURT 4

20150215 1443 P0069

CAUSE NO. 412,249

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Application for Partial Distribution of Trust Funds and in support thereof would show the Court as follows:

1.

Plaintiff is a beneficiary under the Brunsting Family Trust, which is currently the subject of multiple lawsuits pending in this Court, one of which was transferred to this Court from the Federal Court where it had originally begun. That transfer was subject to a Temporary Injunction that had been ordered by the Federal Court that enjoined the distribution of Trust Funds without a court order. *See* Ex. A, Injunction.

2.

Plaintiff has a right to receive funds from this Trust as necessary for her health, education, maintenance and support. The Trust is currently subject to litigation because of the Trustees' misdeeds, and those Trustees are enjoined from exercising their discretion. *See* Ex. A, Injunction. There is no allegation that Plaintiff has breached her fiduciary duty to the Trust and thus no possibility that she will have to disgorge ill-gotten gains back to the Trust. The only question surrounding Plaintiff's ultimate distribution is how much money she will ultimately receive after the Defendant Trustees are found guilty of breaching their duties.

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Because no Trustee can exercise discretion in favor of Plaintiff and make a distribution of her funds to her, Plaintiff moves this Court to make a partial distribution of her share of the Trust to her in the amount of $40,000.00. Plaintiff's interest in the Trust is well in excess of $40,000.00. Based upon the most recent bank statements available to Plaintiff, the total cash held by the Trust is $695,805.63, which makes Plaintiff's 1/5 share equal to $139,161.13. That value does not include real property or stocks which are held in addition to that cash. That value also does not include property improperly distributed to or on behalf of Defendants Anita, Amy or Carole Brunsting and which Plaintiffs anticipates will be ordered restored to the Trust. Plaintiff needs this distribution for her maintenance and support and requests that the Court authorize and order the same.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Candace Curtis respectfully prays that her Application for Partial Distribution of Trust Funds be granted, that the Trustee be ordered to distribute to Candace Curtis the sum of $40,000.00 out of the Brunsting Family Trust, and for such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

Candace Curtis

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2015-05262 / Court: 164

OF COUNSEL:

ostrommorris, PLLC

BY: _____

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 5th day of February, 2015:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. Bradley Featherston
1155 Dairy Ashford Street, Suite 104
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281.759.3213
281.759.3214 (Facsimile)

Mr. Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124
281.870.1647 (Facsimile)

_____
Jason B. Ostrom/R. Keith Morris

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Exhibit A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By M. Flores
Clerk

CANDACE LOUISE CURTIS, §
§
Plaintiff, §
VS. § CIVIL ACTION NO. 4:12-CV-592
§
ANITA KAY BRUNSTING, *et al*, §
§
Defendants. §

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

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recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

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The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

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the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

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presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

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In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

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CAUSE NO. 412,249

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER GRANTING PARTIAL DISTRIBUTION OF TRUST FUNDS

On this day came to be considered the Application for Partial Distribution of Trust Funds filed by Candace Louis Curtis, and the Court is of the opinion and finds that it should be granted. It is, therefore,

ORDERED that the Trustee of the Brunsting Family Trust pay to Candace Curtis the sum of $40,000.00 within seven days of this Order. It is further,

ORDERED that this distribution shall be recorded as a partial distribution of the total value of Candace Curtis's share of the Brunsting Family Trust.

SIGNED on this ____ day of _____, 2015.

_____
JUDGE PRESIDING

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: _____

JASON B. OSTROM
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713.863.1051 (Facsimile)

Attorneys for Plaintiff

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Subject:	Re: Automatic reply: Cause No. 412249101 and 413249401
From:	Bobbie G Bayless (bayless@baylessstokes.com)
To:	cbrunsting@sbcglobal.net; steve@mendellawfirm.com; nspielman@grifmatlaw.com; occurtis@sbcglobal.net; zfoley@thompsoncoe.com;
Date:	Tuesday, July 5, 2016 8:56 AM

Carole--it isn't clear from your email, but are you asking to reset this to another date? If so, we need to try to see about getting on Judge Davidson's calendar with another date asap.

----- Original Message -----

From: Carole Brunsting
To: Bobbie G Bayless ; Steve Mendel ; Neal Spielman ; Candace Curtis ; Foley, Zandra
Sent: Monday, July 04, 2016 9:22 PM
Subject: Re: Automatic reply: Cause No. 412249101 and 413249401

All
As much as I want to get this case resolved I cannot make the mediation next week. The company I work for was purchased by Schlumberger a couple of months ago and it has caused a lot of changes. Last week we were informed of a company meeting that involves our division on the 12th and my boss strongly suggested I be there as they are going to begin to consolidate the finance departments.

Very sorry to have to do this but I don't really have a choice over the timing.
Thanks
Carole

On Wednesday, June 29, 2016 3:31 PM, Bobbie G Bayless <bayless@baylessstokes.com> wrote:

FYI--I got this automatic reply when I sent the email to Zelda Russell.

----- Original Message -----
From: Zelda Russell
To: Bobbie G Bayless
Sent: Wednesday, June 29, 2016 3:23 PM
Subject: Automatic reply: Cause No. 412249101 and 413249401

I will be out of the office from Monday, June 27, 2016 - Monday, July 4, 2016 returning Tuesday, July 5 16, 2016. If you need to schedule a mediation, please email me and I will reply upon my return to the office on Wednesday,July 5, 2016. Judge Davidson's calendar is full for the month of July. If you need to cancel a mediation, please email Judge Davidson at **mdljudge@yahoo.com**.

Thank you,
Zelda

DV

FILED
8/10/2015 12:00:00 AM
Stan Stanart
County Clerk
Harris County

20150810 : 020151021180 : Page 1 of 5

	NO. 412,249-401	**PROBATE COURT 4**
CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
Plaintiff,	§	
V.	§	**NUMBER FOUR (4) OF**
ANITA KAY BRUNSTING, ET AL	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

RESPONSE TO DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER

The Court has raised very valid issues regarding the questions before it, and has asked to be briefed. Plaintiff Curtis therefore submits the following analysis of the questions raised and, although seemingly complex at first view, the matter is really quite simple. There is only one primary premise and thus the first principles require answer to only one inquiry, which is whether or not the interception and dissemination of the challenged electronic communications was lawful.

Plaintiff will respectfully show that the greater weight of unrebutted presumptions falls in favor of the illegality of the recordings, and that judicial discretion would best be exercised with caution, as the Court cannot allow dissemination without proof of the legality of the recordings without also becoming a principal to the crime of dissemination.[1]

Summary of the Argument

1. The recordings are evidence of illegally intercepted electronic communications, a second degree felony[2] in Texas with a moderate severity level.
2. Illegally intercepted electronic communications may not be received in evidence nor exchanged under the pretext of discovery in any civil action, as unauthorized possession or dissemination of illegally intercepted electronic communications is a second degree felony which, as noted, the Court would be unwise to participate in.

[1] Collins v. Collins, 904 S.W.2d 792 (Tex. App. 1995)
[2] Texas [Penal] Code Annotated Sections 12.33, 12.35, 16.01 (West 1997); 1997 Tex. Gen. Laws 1051; Texas [Civil Practice and Remedies] Code Annotated Sections 123.002, 123.004 (West 1997); Texas Code of Criminal Procedure Annotated Article 18.20 (West 1997).

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3/25/2016 1:02:51 PM Chris Daniel - District Clerk Harris County

3. The burden of bringing forth evidence is on the proponents of the legality and admissibility of the recorded wiretap conversations, as the presumption that intercepted electronic communications found in the possession of third parties, meaning persons not privy to the conversations, are presumed unlawful and the burden of showing that the challenged recordings meet one of the statutory exceptions is upon the Defendant disseminators.
4. The Court is without discretion and no agreement is necessary. Under the circumstances here, the Court must issue a protective order, even if only temporary, pending resolution of the issue of whether or not interception and dissemination of the challenged electronic communications was lawful.
5. The attached exhibits in a chronology of relevant events reveals that the recordings are the fruit of an illicit conspiracy targeting Carl and Drina that did not involve Nelva Brunsting and, Defendants' unanimous claims are defeated in their own words uttered at or about the time of the recordings, as hereinafter more fully appears.

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Texas Authority on Admissibility

The admissibility of evidence illegally obtained is tempered by Tex.R.Civ.Evid. 402, which provides in pertinent part that, "[a]ll relevant evidence is admissible, except as otherwise provided ... by statute." Consequently, before the recordings can be held to be inadmissible, the Plaintiff(s) must show their exclusion is required under either the federal or state statute. Section 2511(1) of the federal wiretap statute[3] prohibits the use or disclosure of communications by any person except as provided by statute. *Gelbard v. United States,* 408 U.S. 41, 51-52, 92 S.Ct. 2357, 2363, 33 L.Ed.2d 179 (1972) (witness could not be forced to disclose testimony from illegal wiretap to grand jury).

Section 123.002 of the state wiretap statute states that a party has a cause of action against any person who "divulges information" that was obtained by an illegal wiretap. TEX.CIV.PRAC. & REM.CODE § 123.002.

Section 123.004 states that a party whose communication is intercepted may ask the court for an injunction prohibiting the "divulgence or use of information obtained by an interception." TEX. CIV.PRAC. & REM.CODE § 123.004.

[3] Title III of the Omnibus Crime Control and Safe Streets Act of 1968, more commonly known as the "Wiretap Act," is found at 18 U.S.C. §§ 2510-2522.

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Although the Texas wiretap statute does not specifically provide for the exclusion of illegally obtained "communications," the provisions for a cause of action for divulging wiretap information and the injunctive remedies provided in section 123.004 are sufficient to rebut the presumption of admissibility under rule 402.

Because the tapes were illegally obtained under the federal and state statutes, the trial court should not allow their dissemination, or admit them into evidence, under the exception provided at Tex.R.Civ.Evid. 402.

The recorded conversations are not admissible because the criminal statute dealing with the use of the intercepted communications criminalizes their dissemination, and the civil statute provides a method to prevent dissemination.

> *To permit such evidence to be introduced at trial when it is illegal to disseminate it would make the court a partner to the illegal conduct the statute seeks to proscribe. Gelbard, 408 U.S. at 51, 92 S.Ct. at 2362-63; Turner, 765 S.W.2d at 470.*

Exceptions

In addition to the numerous governmental or agency exceptions to the general rule, it is not unlawful to intercept any form of wire, oral or electronic communications between others if one of the persons is a party to the communication or one of the parties has given their consent to the interception. Tex. Civ. Prac. & Rem. Code §123.001(2); Tex. Pen. Code§16.02(c)(3)(A); 18 U.S.C §2511(2)(c); Kotrla v. Kotrla, 718 S.W.2d 853, 855 (Tex.. App. - CorpusChristi 1986); See also, Hall v. State, 862 S.W.2d 710(Tex. App. - Beaumont 1993, no writ); Turner v. PV International Corporation , 765 S.W.2d 455, 469-71(Tex. App. - Dallas 1988, writ denied per curiam, 778S.W.2d 865 (Tex. 1989).

Interception, Possession, and Dissemination

The Right to Privacy is the Controlling Presumption

The right to privacy is held in such high esteem that the U.S. Congress and the Texas Legislature have both made it a felony to illegally intercept, possess or disseminate electronic communications. There are very limited exceptions none of which apply here.

The mandatory but rebuttable presumptions are that the participants to these phone conversations had a reasonable expectation of privacy; that the right has been violated and; that the burden of showing the interception of those electronic communications meets one of the statutory exceptions is upon persons who were themselves not a party to the private electronic

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communications, but who we find to be in possession of and disseminating the challenged recordings.

Defendants have produced no evidence tending to show that the intercepted electronic communications meet any of the lawful exceptions and the ball is in their court. If the wiretap recordings cannot be shown by the Defendants to meet one of the statutory exceptions, the recordings are prima facia unlawful, regardless of any alleged motives for their interception.

While no more than the foregoing law and fact summary is essential to the disposition of the singular issue before the Court, it seems necessary to address Defendants' unanimously disingenuous assertions and thus Plaintiff does so with the attached Memorandum.

The attached memorandum on the matter of context and color, with attached exhibits, is hereby incorporated by reference as if fully restated herein.

Plaintiff Curtis respectfully submits the following proposed order.

Respectfully submitted,

Candace L. Curtis, *Pro se*
218 Landana Street
American Canyon, California 94503
occurtis@sbcglobal.net
925-759-9020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9th day of August 2015, to the following via email:

Attorneys for Anita Kay Brunsting

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The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
brad@meddellawfirm.com

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nspielman@grifmatlaw.com

Attorneys for Drina Brunsting as
attorney-in-fact for Carl Henry Brunsting:

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bayless@baylessstokes.com

Attorneys for Carole Ann Brunsting

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1401 McKinney, 17th Floor
Houston, Texas 77010
dsmith@craincaton.com

CANDACE L. CURTIS

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08/12/2015 11:02:10:P0207

No. 412,249-401

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

TEMPORARY PROTECTIVE ORDER

On August 3, 2015 the Court heard and considered CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER and Defendants' response thereto.

At issue are recordings of intercepted electronic communications between Plaintiff Carl Henry Brunsting and his wife Drina.

After hearing on the merits and reviewing briefs submitted by the parties, the Court is of the opinion that the recordings in point are "Protected Communications" as that term is defined at 18 U.S.C. §§2510(1) & 2510(12) and that a protective order is necessary to protect privacy rights pending disposition of the pending questions at issue.

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IT IS THEREFORE ORDERED that any person or entity subject to this Order-including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -shall adhere to the following terms, upon pain of contempt and any other applicable civil or criminal penalties:

1. No person or entity shall, in response to a request for discovery or subpoena issued in this action, produce any Protected Communication for any third party or person absent further order of this Court.

2. To the extent a Protected Communication is or has already been produced in response to a request for discovery or subpoena issued in this action, any recipient of such production shall (a) immediately surrender any and all documents that contain or

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reflect a Protected Communication to real party in interest Carl Henry Brunsting through his Counsel of Record and (b) destroy any copies made of such Protected Communication, as well as any derivative materials that reflect a Protected Communication on any medium of storage whatsoever.

3. Any party to this action that issues a request for discovery or subpoena calling for the production of a Protected Communication shall simultaneously provide the recipient of the discovery request or subpoena with a copy of this Protective Order. To the extent a party to this action has already issued such a request or subpoena, such party shall provide a copy of this Protective Order to the recipient within three (3) business days of the entry of this Order.

4. Any person who receives a request for discovery or subpoena in this action calling for the production of a Protected Communication shall, without revealing the substance or content of a Protected Communication, provide both the issuing party and the Court with a general description of that Protected Communication so that the issuing party can make an application to this Court for production of that Protected Communication, and that Plaintiff Carl Henry Brunsting can respond to that application.

IT IS FURTHER ORDERED that on or before _____, sworn affidavits are to be provided by Defendants Anita Brunsting, Amy Brunsting, and Carole Brunsting, stating any personal knowledge with regard to every recording made since July 1, 2010 within the following categories:

- All audio or video recordings of meetings, conversations, telephone messages, or other communications with Elmer, Nelva, or any of the Brunsting Descendants concerning Brunsting Issues,
- All audio or video recordings of Nelva's execution of any documents.
- All audio or video recordings of evaluations of Nelva's capacity,
- All other audio or video recordings of any Brunsting family member, and
- All investigations made of any Brunsting family member, including any surveillance logs or reports.

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The sworn affidavits shall identify every party involved in making the recordings and specify the date, location, and means used to make the recordings, the current location of all original recordings and all copies of all recordings, all parties to whom the contents of recordings have been disclosed, and all uses which have been made of the recordings.

IT IS SO ORDERED!

Signed August, _____, 2015.

_____
Christine Butts, Judge
Harris County Probate Court No. 4

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NO. 412,249-401

CANDACE LOUISE CURTIS	§	**IN PROBATE COURT**
	§	
Plaintiff,	§	
	§	
V.	§	**NUMBER FOUR (4) OF**
	§	
ANITA KAY BRUNSTING, ET AL	§	
	§	
Defendants.	§	**HARRIS COUNTY, TEXAS**

MEMORANDUM OF FACTS SUPPORTED BY DEFENDANTS' OWN DISCLOSURES

Plaintiff Candace Louise Curtis respectfully submits for the perusal of the Court this memorandum of facts adding to the inquiry context and color revealing the true nature of the intentions behind the unlawful interception and dissemination of the private electronic communications at issue.

Statement of the Issue

Recordings of private electronic telephone conversations between plaintiff Carl Brunsting and his wife Drina Brunsting have been disseminated to all of the parties to the present lawsuits. These recordings, if any, were requested by Plaintiff Brunsting to be produced by the Defendants in the Petition for Deposition Before Suit filed by Carl Brunsting March 9, 2012, when there were no other parties, however, the recordings were not disclosed until July 5, 2015.

Plaintiff Carl Henry Brunsting, along with his wife and attorney in fact Drina Brunsting, challenged the recordings as the product of the illegal interception of electronic communications, in violation of state and federal wiretap laws, and thus seek protective orders.

In DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Defendants unanimously assume the following postures:

1. *It is certainly understandable that Drina has such opposition to the recordings because it proves that Nelva was planning for Drina and Carl's divorce and that Nelva felt Carl's medical condition made him unable to serve as a trustee.*

2. *On information and belief, all audio recordings came from an answering machine which Carl either intentionally set up to record the calls and/or which triggered in accordance with its own operation. Either way, one-if not both-participants had full knowledge that he/she was being recorded.*

3. *Drina provides no evidence that both parties to the conversations did not consent to the recordings, which is a prerequisite to the relief sought.*

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A Recital of Known Facts

1. There are known recordings of private phone communications between Carl and Nelva and between Carl and his wife Drina, which are the object of the application for protective order.

2. The recordings were disseminated by Defendant Anita Brunsting, who is not a party to any of the disclosed communications.

3. We have a claim by Carl Henry Brunsting and his wife Drina that the recordings were illegally obtained.

4. We have a unanimous response from all three Defendants asserting upon information and belief that the recordings were legally obtained but answers to interrogatories on the subject indicate that none of them know anything individually.

5. The question of admissibility hinges upon the legality of the interception and dissemination of the communications.

6. A presumption that the right of privacy has been violated is primary and stands unrebutted by competent evidence to the contrary.

7. The burden of proof as to the legality of the acquisition and dissemination of the recordings is on the proponent of the assertions that the recordings were obtained legally and are therefore admissible.

8. The proponent of the legitimacy and admissibility of the recordings objects that declaring the facts necessary to qualify the recordings as legally obtained evidence before dissemination is somehow onerous, but at the same time want carte blanch to disseminate the recordings to persons not privy to the conversations under the auspices of discovery and disclosure.

9. Unless the recordings can be qualified as legally obtained they are inadmissible and cannot be disseminated lawfully.

10. There are questions as to the recordings' origins and Defendants file a joint motion claiming the existence of specific facts while taking no individual responsibility for personal knowledge.

11. Anita Brunsting, through her counsel Brad Featherston, disseminated the recordings and, thus, Anita Brunsting would have at least some personal knowledge regarding the chain of custody and control, and both now share in the culpability and attendant civil liability.

12. Assertions that the recordings were made on an answering machine would indicate personal knowledge by one if not all of the Defendants.

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13. An assertion that the recordings were authorized by Carl Brunsting requires evidentiary support from the proponent of the claim, and there has been none.

14. Assertions that Carl Brunsting installed and activated the Answering Machine are inconsistent with the Defendants' emails of the same date of the purchase of the voice recorder showing they were conspiring to get guardianship over Carl.

15. Carl was both incompetent and the proper subject of Defendants' intended guardianship effort or he was competent to install and activate the "Answering Machine" that Defendants insist he made the recordings on. Both of these things cannot be true.

16. In the Bates stamped disclosures there is a receipt for a signal activated SONY digital voice recorder purchased four days before the first dated recording on the disseminated CD. When combined with the attached email and other exhibits talking about getting guardianship over Carl, continuing the Private Investigator over the weekend, knowing where Carl and Drina were and what they were doing at that very point in time, and all of these events in the same time period as other documented activities, provides a presumption that the circumstances and intentions surrounding the acquisition of the recordings are not what Defendants claim, as hereinafter more fully appears.

The hierarchy of presumptions is as follows:

1. The participants to a private telephone conversation have a reasonable expectation of privacy against electronic eavesdropping.

2. The waiver of a known right must be a knowing and intelligent act done with sufficient knowledge of the relevant circumstance and likely consequences, and it must be both a voluntary and an overt act.

3. There is no affirmative evidence of such waiver.

4. Unless rebutted the presumption that the recordings were illegally obtained is not only controlling but the prudent course.

The True Context and Color

The only probative value these recordings could possibly have is in the fact of their very existence. Defendants argue that the content of the challenged recordings adds context and color to the events of the time showing that Nelva was preparing for Carl's alleged divorce. As in all other instances Defendants fail to provide anything but claims of Nelva's intentions based upon the strength of the honor and integrity of their word alone.

Despite all the posturing and game playing the evidence will show the Defendants are intractably disingenuous and that they illegally intercepted the private electronic communications as part of a conspiracy to steal the family inheritance. That conspiracy involved attempts to have

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Nelva declared incompetent and to gather what they thought would be evidence to support guardianship over Carl.

The evidence will further show Defendants stalked Nelva through her email and banking activities online, in addition to tapping her phone and recording every conversation involving anyone who spoke with Nelva on the phone, including Plaintiff Curtis in California.

Candace Freed took her instructions from ANITA despite her claims it was Nelva who was making the requests for changes to the trust. (Exhibit A)

The October 25, 2010 phone conference called for by Candace Freed excluded Carl and Nelva and was ultimately about having Nelva declared incompetent, which they failed to achieve by mid-November. The "law firm" did not keep an audio recording of that conference.

There is no evidence Nelva even knew of these changes before Plaintiff Curtis' 10/26/2010 phone call, after which Nelva sent Candace her hand written note repudiating the alleged 8/25/2010 QBD.

Defendant Carole Brunsting sent an email about overhearing Nelva's conversation on the phone with Candace Freed. (Exhibit B)

Freed sends a follow up email regarding the failed attempt at getting Nelva declared incompetent on Nov. 17, 2010, apparently referring to this same conversation. (Exhibit C)

Despite Defendant Amy Brunsting's claims of not being involved before Nelva's death, Amy and Anita corresponded with Candace Freed December 23, 2010 and on several other dates prior to Nelva's demise. (Exhibit D)

On March 8, 2011 Anita emails Carole, Amy and Candace bragging about reminding Nelva she was no longer trustee and no longer had access to the trust. (Exhibit E)

March 17, 2011 Tino (Nelva's caregiver) buys a Sony Digital Voice Recorder, (Brunsting 004570) which shows one ICD-PX312 digital voice recorder purchased by Tino at Best Buy in Houston. (Exhibit F)

March 17 and 18, 2011 emails mention the PI and talk about getting guardianship over Carl. (Exhibit G 1-3)

March 21, 2011 is the record date of first wiretap .wav file (received from Brad on CD 7/5/2015) (See Carl Brunsting Petition for Protective Order)

On March 24 and 25, 2011 there are large trust-prohibited transfers of Exxon Mobil and Chevron Stocks labeled as "gifts". (See Report of Special Master)

On March 29, 2011 Amy and Anita communicated with Freed (Exhibit D)

Redacted

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April 22, 2011 is the record date of second .wav file (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order)

Then on May 11, 23 and 25, and on June 14 and 15, there are more large trust-prohibited transfers of Exxon Mobil and Chevron Stocks. (Report of Special Master)

July 27, 2011 Anita corresponds with Freed (Exhibit D)

August 16, 2011 Anita corresponds with Freed (Exhibit D)

September 20, 2011 Amy and Anita correspond with Freed (Exhibit D)

February 27, 2015 is the record date of the third and fourth .wav files (received from Brad 7/5/2015) (See Carl Brunsting Petition for Protective Order), indicating these two recordings had been excerpted from a master storage disk containing even more undisclosed recordings.

There is an overwhelming volume of evidence clearly showing more of the same pernicious intent, but since the matter before the Court is limited to the singular question of the legality of Protected Communications, Plaintiff Curtis will not respond to the plethora of Defendants' extemporaneous expressions of disingenuous, self-serving bias, and otherwise irrelevant assertions.

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Respectfully submitted,

Candace L. Curtis, *Pro se*
218 Landana Street
American Canyon, California 94503
occurtis@sbcglobal.net
925-759-9020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 9th day of August 2015, to the following via email:

Attorneys for Anita Kay Brunsting

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1155 Dairy Ashford, Suite 104
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08/12/2015 10:20:04 PM 15

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nspielman@grifmatlaw.com

Attorneys for Drina Brunsting as
attorney-in-fact for Carl Henry Brunsting:

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Attorneys for Carole Ann Brunsting

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Houston, Texas 77010
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CANDACE L. CURTIS

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EXHIBIT A

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06/12/2015: 1020: P0217

PM TRUST REVIEW MEETING

Signing Date & Time: Wed. Aug. 4th 2 pm.
Fee: _____
Paid: _____ Mail: _____

Client Name: Brunsting, Nelva

Date: 07/30/10 **Estate Size:** 2 mil ±

IRA: Husband - N/A **Wife -** _____

Current Address/Phone: 13630 Pinerock Hou TX 77079

Date of Trust/Restatement: _____ **Previous Amendments?** Yes.

Subtrust Funding Done previously? Yes. DT & ST.

AMENDMENT: ✓ QBD(PAT)✓ ____ Other ____ Instr Ltr ✓ HCPOA✓
✓ ApptSUCCTee/HIPAA✓ ___ ExTPOA ___ ✓COT ___ ✓POA✓ ___ DIR

Anita Kay Riley & Amy Ruth... Co-tees
or Survivor of Them. Then Most

✓ **Distribution Change (QBD):**

PAT QBD

IF PAT QBD then:

Each beneficiary Trustee of Own Trust: ✓ yes ____ no

except for Carl, Anita & Aimee as Co-tees for Carl
(except they have rt to name Carl as orbm 4 Mead to own Succ Tee)
Distribution of PAT: _____

Same as LT except need language
about the last amend (QBD) ltes early distrs.

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_____ **Specific Distribution:**

_____

_____

_____ **Ultimate Distribution:**

_____

_____

_____ **HEALTH CARE DOCUMENTS:**

1ST Agent: Carol

2nd Agent: Anita

3rd Amy

IRA TRUST: _____ **yes** _____ **no** For whom? _____ husband _____ wife

Trustees upon disability of Trustor or spouse: _____

Each beneficiary Trustee of own trust? _____ yes _____ no

_____

_____

_____

_____

SS# of Surviving Spouse/Beneficiaries: _____

OCT. 20. 2015 10:20AM P0219

FUNDING:

Real Estate _____

Which property has NO MORTGAGE? _____

_____ Recording HS Deed

_____ Apply for HS Exemption

Tax-deferred Assets _____

_____ Bank & Brokerage Accounts
_____ Life Insurance
_____ Oil & Gas Interests
_____ Credit Union Accounts
_____ Partnership Interests
_____ CDs
_____ Safe Deposit Box
_____ Stocks and Bonds
_____ Motor Vehicles
_____ Sole Proprietorship Assets
_____ Promissory Notes & Mortgages
_____ Annuities

Additional Documents: _____

NOTES:

Needs new DFPOA order

Anita

Carol

Amy

Any Name Changes for children? _____ **Any children Predecease?** No.

If Yes, who: _____

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FEES:

QUOTED: $ _____ **(Plus Expenses)**

AMOUNT REC'D: None **DATE:** _____

BALANCE DUE: _____

DOCUBANK? _____

Cost Pat QBD 1200.
Hipaa Pkg 250 - med POA
D.F.P.O.A 150.-
Appl. of Succ TEE
New Card.

Courtesy discount $150.-
Cy

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G:\PM Docs\Checklists\5-1 Checklists\PM Trust Review Mtg.wpd

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Anita - called
Carl has ensephleytes
amendments to trust

Anita + Aimee as Co-Tees

Change list under ME
Carol
Anita
Aimee

Financial P.O.a
Anita
Carol
Aimee

Amend to trust /PAT's w/ Aimee to be Co-tees
to correct Supp Needs to. Anita
Sp needs?

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08/12/2015 10:20:04 P0222

From: Anita Brunsting
To: Candace Freed
Sent: 10/6/2010 8:19:06 PM
Subject: Brunsting Family Trust

Candace,

I spoke to mom tonight and she agreed to resign as trustee and appoint me as trustee. I told her that you would be contacting her to re-explain things and make sure she understood what was happening.

If you have any questions, my cell is 361-550-7132.

Thanks,
Anita

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EXHIBIT B

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08/12/2015 10:20:00 PM

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Thursday, October 28, 2010 9:00 AM
To: Candace Curtis
Subject: Re: One more

Candy,
The more I think about this the whole key is Carl. When I was listening to Mother's call with Candance, Mother told Candace that Carl was trustee, not Anita and was not following the changes Candane was telling her she had made to have Carl removed.. Legally, I wonder if what Candace did was right without consulting Carl or his power of attonery since Carl has always been present at all meetings.

--- On **Thu, 10/28/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: One more
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Thursday, October 28, 2010, 10:34 AM

Candace DOES know she fucked up. That's why she had such a nasty attitude towards both you and I. Anita is smug and Amy plays dumb.

I hope Carl goes home today! If he does I hope the sun is shining. 10 minutes smiling into the sunshine + coffee + the Beatles = a sharper, happy Carl. I have a strong feeling that he will recover in leaps and bounds ALL ON HIS OWN, with support from his wife and family. The fact that Daddy is looking over us gives me strength. I can feel him stronger than ever before.

My suggestion is that when Dr. White finds Mother competent the following should happen:

1. You need to complete your time-line to demonstrate that due to various factors (badgering, low oxygen, Carl's illness, her illness, pneumonia, general stress and worry due to all of this), Mother was incompetent and under extreme duress when she signed everything she signed, particularly the Power of Attorney. We can compose a letter to Candace for Mother to sign, demanding that she wants to have papers drawn up to revoke anything she agreed to between the first of July and now.

2. As Mother gathers strength over the next few weeks she will go to her MD Anderson appointments, etc. and move towards treatment and recovery. I want to stress nutrition, adequate good sleep, and stress-free living.

3. In the meantime she can sell what she needs to, to pay for Robert or Tino or whoever Drina needs to assist her with Carl (if she even needs someone - Carl may recover a lot in a few weeks at home). The cost will be minimal compared to the $100k shithead got to buy her house.

Going forward, Mother will have to tell Candace IN WRITING what she wants done with the trust. You can help her compose the letters. There can be no question when it's in writing. You can assist Mother in reviewing the paperwork before she signs (at home - at her leisure), to make sure all her wishes have been incorporated. This should never be done under the pressure and duress she was subjected to. Mother can take as much time as she needs to read and understand that everything will be as she wants it to be.

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The fair and equitable solution in my mind is:

Make all five of us successor co-trustees and require a majority to make any change whatsoever. Then, if Mother steps down there will be no shenanigans. Everything will be transparent and we'll all know everything everyone else knows. That way when Anita wants to sell the farm, or move away from Edward Jones, she can put it up for a vote among us. All five of us are intelligent people and none of us can honestly say we have NEVER made a wrong choice in our lives. This way Mother will be at peace to live out her life, and she will die knowing that she has not pitted one against the other, or given control of one over the other, or played favorites, or been bullied into doing something she didn't really want to do, or would not have done in the first place.

Now this may go AGAINST the norm, or what Candace and her ilk would recommend, but fuck them. They are attorneys who get paid to do what their clients want them to do and they love having to draw up documents. Fees, fees, fees, $$$$$$$$$$$$

If Anita succeeds in her agenda and becomes trustee, we should have her competency tested just to show her what it feels like. If everything stays the way it is right now, that's the first thing I'm going to do when the day comes that she's in charge of me. Na, Na, Na, Na, Na, Na.

Love you,

C

From: Carole Brunsting <cbrunsting@sbcglobal.net>
To: occurtis@sbcglobal.net
Sent: Wed, October 27, 2010 9:32:06 PM
Subject: One more

And do not overlook an exploration of the family's motives in requesting a competency evaluation, she cautioned. Do family members have reason for wanting their oddly behaving relative to be declared incompetent?

This is from an article about not rushing to declare and elderly person incompetent.
Mother passes the smell test and I have to make sure Tino does not let her out of the house without her clothes being ironed and SEE!!! MOTHER MADE THE APPOINTMENT TO GET HER HAIR DONE!!! CANDY THAT IS IT!!! MOTHER DOES CARE ABOUT HER APPEARANCE!! She will not go out without her makeup one and I have to get her a nail file all the time. Mother also called Edward Jones on her own and sold $10K so she would have enough money to live on.

She was temporarily incompetent when she was to low on oxygen and if they made her walk to Candace's offic I know for a fact her levels were to low because Dr. White joked about it. Tino did not take her so she had to walk from the parking lot to the office. She did not understand what she was signing because she was to short o breath and I can prove that. Candane has to know she F***ed up.

--- On **Wed, 10/27/10, Carole Brunsting** ***<cbrunsting@sbcglobal.net>*** wrote:

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Subject: Found this
To: occurtis@sbcglobal.net

Date: Wednesday, October 27, 2010, 10:38 PM

There are any number of situations that may cause you to question the competency of a family member to make sound life decisions, such as when:

- An elderly person suddenly changes a will or trust in a manner that is significantly different from all previous wills or trusts, which could result in will litigation if not appropriately handled during the elder's life.
- A family member has suspicion that the elderly person is being unduly influenced by others

Anita is unduly influencing Mother and now Amy has piled on. Mother never would have made these changes on her own. This was all done by the hand of Anita who put herself in charge of everything.

08/12/2015 10:20:P00226

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08112015:1020:P0227

EXHIBIT C

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08/12/2015 10:20:P0228

Subject: Fw: Nelva Brunsting
From: Candace Curtis <occurtis@sbcglobal.net>
Date: 3/11/2015 6:24 PM
To: Rik Munson <blowintough@att.net>

On Wednesday, November 17, 2010 2:38 PM, Candace Freed <candace@vacek.com> wrote:

Amy and Family, Thank you for the update on your mom, Nelva Brunsting. The purpose of the conference call and the suggestion that Ms. Brunsting be evaluated was based solely on conversations that I had with Ms. Brunsting and to let you all know that I had concerns based on those conversations. If she has been evaluated by her physician and you as a family are comfortable with his or her diagnosis, then you have addressed the concerns that I had. I appreciate your letting me know the opinion of the doctor. I hope your mom is doing well and she continues to improve.

Please let me know if I can be any further assistance.

Very truly Yours,

Candace L. Kunz-Freed
Attorney at Law

Vacek & Freed, PLLC
14800 St. Mary's Lane, Suite 230
Houston, Texas 77079
Phone: 281.531.5800
Toll-Free: 800.229.3002
Fax: 281.531.5885
E-mail: candace@vacek.com
www.vacek.com

We have moved! Our new office address is as shown above. We are one exit west of our old office building. Exit Dairy Ashford. Turn south on Dairy Ashford. St. Mary's Lane is a side street one block south of I-10 Katy Freeway. Turn west on St. Mary's Lane. Our building is in the northwest corner of the four-way stop.

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09/11/2015:10:20:P0229

EXHIBIT D

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DEFENDANTS' PRIVILEGE LOG

Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002054 - V&F 002057 (1)	1/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002058 - V&F 002060 (2)	7/27/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002061 - V&F 002066 (3)	12/08/11	Candace L. Kuntz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002067 - V&F 002070 (4)	12/23/10	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002071 - V&F 002072 (5)	3/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Thompson Coe Fax:7134039299 Jan 31 2014 02:55pm P005/014

17-20360.2765

Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002073 - V&F 002075 (6)	9/20/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002076 (7)	11/29/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002077 - V&F 002078 (8)	12/28/11	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002079 (9)	1/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 0020890 (10)	1/31/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Bates No.	Date	Author	Recipient	Document Type	Subject Matter	Privilege
V&F 002081 (11)	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (12) 002082 - V&F 002085	2/14/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (13) 002086 - V&F 002089	3/20/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (14) 002090 - V&F 002093	3/29/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F (15) 002094	4/12/12	Vacek & Freed, PLLC	Anita Kay Brunsting and Amy Ruth Brunsting	Statement	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Bates No.	Date	From	To	Type	Subject	Privilege
V&F 002095 - V&F 002096 (16)	1/24/11	Anita Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding stock valuation.	Attorney-Client Communication
V&F 002097 (17)	1/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002098 (18)	7/27/11	Summer Peoples	Anita Kay Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002099 (19)	8/16/11	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002100 (20)	12/8/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding representation.	Attorney-Client Communication
V&F 002101 - V&F 002102 (21)	12/20/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication
V&F 002103 - V&F 002104 (22)	12/20/11	Candace L. Kuntz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding life insurance proceeds.	Attorney-Client Communication

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NOT FILED

Privilege Log No.	Date	Author	Recipient	Document Type	Subject	Privilege
V&F 002105 - V&F 002106 (23)	12/28/11	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002107 (24)	1/03/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding title of the Buick.	Attorney-Client Communication
V&F 002108 (25)	1/05/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding Trust Information Sheets.	Attorney-Client Communication
V&F 002109 - V&F 002112 (26)	1/09/12	Candace L. Kuntz-Freed	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Email string between attorney and client regarding distribution of trust funds.	Attorney-Client Communication
V&F 002113 - V&F 002114 (27)	1/22/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication
V&F 002115 - V&F 002116 (28)	1/23/12	Candace L. Kunz-Freed	Anita Kay Brunsting	Email	Email string between attorney and client regarding notice to beneficiaries.	Attorney-Client Communication

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P009/014

Bates No.	Date	Author	To/Recipient	Document	Subject	Privilege
V&F 002117 - V&F 002118 (29)	1/23/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002119 - V&F 002121 (30)	1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust documents.	Attorney-Client Communication
V&F 002122 - V&F 002123 (31)	1/24/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding trust accounting.	Attorney-Client Communication
V&F 002124 - V&F 002125 (32)	1/31/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Email string between attorney and client regarding Farmland LLC.	Attorney-Client Communication
V&F 002126 - V&F 002127 (33)	1/31/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002128 (34)	2/14/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Thompson Coe Fax:7134039289 Jan 31 2014 02:56pm P010/014

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Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002129 (35)	2/15/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Correspondence	Attorney communications to client regarding estate planning documents.	Attorney-Client Communication
V&F 002130 - V&F 002132 (36)	2/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Summer Peoples	Email	Attorney communications to client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002133 - V&F 002139 (37)	3/02/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding trust value report.	Attorney-Client Communication Attorney Work Product
V&F 002140 - V&F 002142 (38)	3/06/12	Amy Ruth Brunsting	Candace L. Kunz-Freed	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product
V&F 002143 - V&F 002148 (39)	3/14/12	Anita Kay Brunsting	Candace L. Kunz-Freed and Amy Ruth Brunsting	Email	Communication between attorney and client regarding promissory note.	Attorney-Client Communication Attorney Work Product

17-20360.2771

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Bates No.	Date	Author	Recipient	Description	Subject	Privilege
V&F 002149 (40)	3/20/12	Summer Peoples	Amy Ruth Brunsting, Anita Kay Brunsting, and Chip Mathews	Email	Attorney communications to client regarding request for wills.	Attorney-Client Communication
V&F 002150 - V&F 002151 (41)	3/20/13	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002152 (42)	3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed, Chip Mathews, and Amy Ruth Brunsting	Email	Attorney communications to client regarding December of 2011 accounting.	Attorney-Client Communication
V&F 002153 (43)	3/22/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Attorney communications to client regarding accounting.	Attorney-Client Communication
V&F 002154 - V&F 002155 (44)	3/27/12	Anita Kay Brunsting	Chip Mathews, Amy Brunsting, Candace L. Kunz-Freed	Email	Email string between attorney and client regarding accounting.	Attorney-Client Communication
V&F 002156 - V&F 002158 (45)	3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Chip Mathews	Email	Email string between attorney and client regarding asset lists.	Attorney-Client Communication

17-20360.2772

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P012/014

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Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002159 (46)	3/28/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Brunsting, and Bernard Mathews	Email	Attorney communications to client regarding asset lists.	Attorney-Client Communication
V&F 002160 - V&F 002161 (47)	3/29/12	Anita Kay Brunsting	Candace L. Kunz-Freed	Email	Email string between attorney and client regarding assets and expenses.	Attorney-Client Communication Attorney Work Product
V&F 002162 - V&F 002163 (48)	3/29/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product
V&F 002164 - V&F 002166 (49)	3/30/12	Candace L. Kunz-Freed	Anita Kay Brunsting, Amy Ruth Brunsting, and Bernard Mathews	Email	Email string between attorney and client regarding asset list.	Attorney-Client Communication
V&F 002167 (50)	4/12/12	Summer Peoples	Anita Kay Brunsting and Amy Ruth Brunsting	Email	Attorney communications to client regarding attorneys' fees.	Attorney-Client Communication Attorney Work Product

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P013/014

17-20360.2773

Bates No.	Date	Author	Recipient	Document	Subject	Privilege
V&F 002168 - V&F 002183 (51)		Candace L. Kunz-Freed		Chart	Attorney notes/history of representation	Attorney-Client Communication Attorney Work Product
V&F 002184 - V&F 002191 (52)	11/22/11			Document	Authorization for Release of Protected Health Information	Attorney Work Product
V&F 002192 (53)	11/22/11			Document	Authorization for Release of Information	Attorney Work Product

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Thompson Coe Fax:7134038299 Jan 31 2014 02:56pm P014/014

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08112015:1020:P0240

EXHIBIT E

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08112015:1020:P0241

From: Candace Curtis (occurtis@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Sat, February 18, 2012 11:29:12 AM
Cc:
Subject: Fw: New Development

----- Forwarded Message ----
From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Tue, March 8, 2011 7:15:32 PM
Subject: RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

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EXHIBIT F

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TIME SHEET

08/12/2015:10:20:P0248

Employee Name: Faustino Vaquera **Title:**

Week: March 15 — March 19

Date	Start Time	End Time	Regular Hrs.	Total Hrs.
3-15 Tues	8:30 am	12:00 am	15.30	
3-16, Wed	12:00 am	2:00 pm	14	
↓	4:00 pm	12:00 am	8	
3-17, Thur	12:00 am	9:30 am	9:30	
3-[redacted]	6:30 pm	12:00 am	5:30	
3-18 [redacted] Frid	12:00 am	6:00 pm	18	
	WEEKLY TOTALS:		70 ½	

Employee Signature: [signature] **Date:** 3-18

Supervisor Signature: **Date:**

70.5
x 15.00
= 1057.50

Groceries & Food = 126.26

Best Buy Digital Voice Recorder 64.94

191.20

Total = 1248.70

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08:12:55 :: 0220 :: 0002247

WELCOME TO BEST BUY #216
HOUSTON, TX 77024
(713)647-6004

Keep your receipt!

Val #: 0422-1046-6045-3089

0216 003 2499 03/17/11 18:22 00005044

1792142 ICDPX312 59.99
ICDPX312 DIGITAL VOICE RECORD
ITEM TAX 4.95
6094193 RZ SILVER 0.00 N
REWARD ZONE PREMIER SILVER
MEMBER ID 0329918420

SUBTOTAL 59.99
SALES TAX AMOUNT 4.95
TOTAL 64.94

xxxxxxxxxx4030 DEBIT 64.94
FAUSTINO VAQUERA JR
APPROVAL 132943
REFERENCE NUMBER: 0216003

ALEX,
THANKS FOR SHOPPING AT BEST BUY TODAY!
YOUR REWARD ZONE BALANCE AS OF 03/08/11
POSTED POINTS: 153
Go to MyRZ.com FOR MORE INFO

Congratulations! As an added benefit of being a Reward Zone program Premier Silver member, you may return eligible products up to 45 days from purchase date.

Dear Valued Customer,

To help keep prices low for all of our

directly or indirectly by the products listed on this receipt.

THE SHACK THANKS YOU.

RADIOSHACK 01-8020
Kroger Plaza Sc
14356 Memorial Dr
Houston, TX 77079-6704
(281) 496-9429

Order: 057553 03/17/2011 08:14P Term #002

Helped By: 001 (MAR)
Entered By. 001 (MAR)

4200223 3' 1/8' M-M PATCH CABLE 1 8.39

Subtotal 8.39
Tax 8.25% 0.69
Total 9.08

Credit Card 9.08

Change Due 0.00

Acct# xxxxxxxxxxx0307 M
Card Type VI
Tran# 12687148
Auth# 161235 9.08
Host Captured Y

The card holder identified hereon may apply the total amount shown on this receipt to the appropriate account to be paid according to its current terms.

I agree to pay above total according to card issuer agreement.

Your name, address and the original sales receipt are required for all refunds. Sales and returns are subject to the terms and conditions identified on the back.

Shop online 24/7 at
www.radioshack.com

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08/14/2015 10:20:P0245

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EXHIBIT G

08112015:1020:P0246

From: Amy Tschirhart <at.home3@yahoo.com>
Sent: Wednesday, August 18, 2010 12:58 PM
To: Anita Brunsting; Carole Brunsting; Candy Curtis
Subject: CPA's advice

Hi,

I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.

She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.

I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing *any* of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

COPY

08/12/2015 10:20:P0247

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Friday, March 18, 2011 11:59 AM
To: Anita Brunsting; Amy Tschirhart; Candace Curtis
Subject: Re: atty for guardianship

I think that Drina has always projected her own family issues onto ours. She was completely distanced from her own family until a year ago when her brother passed away and now she is talks about the relationship with her dad like they have been close forever which has not been the case.

She must have had some very bad things happen to her in her childhood and slowly but surely she twisted Carl's mind to go along with everything she did and said. I think you are right that this will have to play itself out to see what she does. She has been waiting for the day she and Carl get the "big" trust payout and then it will be see you later chumps!

--- On **Fri, 3/18/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: atty for guardianship
To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
Date: Friday, March 18, 2011, 1:49 PM

The Brunsting family has never been very demonstrative of their love for one another, but I chalk that up to being Dutch. What I cannot seem to wrap my arms around is the extreme coldness of Drina and Marta. They have always been limp when hugged and hugging is one of the best things in the world. One power hug and all my cares fly out the window. I believe it must be a genetic brain chemical imbalance in Drina's family. She has spent her life with Carl trying to distance HIM from his family and turn him into a cold fish like her. How did she ever get pregnant in the first place? Maybe we should try to get some DNA from Marta and Carl and do a paternity test. Wouldn't it be something if he wasn't her father?????????? LOL

Frankly, as long as the trust is safe, we should probably just let nature take its course and sooner or later we will get Carl out of their clutches and into ours. He might be pissed off for awhile, but I have some small faith that once he can reason better he will see that we only seek what is best for him in the long run BECAUSE WE LOVE HIM. Once he is able to reason and be reasoned with, and has regained some control of his life, if he chooses to go back to his moron wife and their moron spawn, I will mourn him as if he were dead. Until such time I will assume that, somehow, at some point in his recovery, he will realize how miserable the bitch has made his life. He might see that all she has ever cared about is money and how to avoid having to go out and earn some.

If asked, Carl would probably say no to coming out here to live with us, even though it might be the very best thing for him. He should never feel like he has been "dumped" on anyone. I think he would have a lot more stimulation out here. He does love the Bay Area and after a short time he might gain some real incentive to get well.

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>

UNOFFICIAL COPY

Sent: Fri, March 18, 2011 8:59:24 AM
Subject: atty for guardianship

Ok, I think I may have found an atty who could handle the guardianship issue. She was recommended to me by the Burgower firm that Amy's lawyer had given her - the Burgower firm does not do guardianship cases. This atty's name is Ellen Yarrell; her offices are in the Galleria area; she charges an initial consult fee of $350 for 1 hr of her time, and probably requires an retainer of $2000. Her paralegal (Elizabeth) said that she's handled cases like this before (where an impaired person has been divorced by their spouse). I asked about the expense and she said that Yarrell could give us a better idea after the consult and it depends on whether the guardianship would be contested (so that depends on whether we fight Drina now, or wait to see if she'll divorce him and then we're facing Marta (if she pursues it)). I got the feeling that "expensive" meant more like $50,000 not $1 million.

I thought of another plus on our side if Drina divorces him - Drina will probably expect him to come live w/ mother - so if he's w/ us and not his daughter that lends more credence to our side for guardianship (possession is 9/10's of the law?).

I also talked to mom last night and told her what was going on. I asked her if she was ok w/ using her money to pay for Carl's legal fees and of course she said yes.

UNOFFICIAL COPY

08:20150216:P0248

08/12/2015 10:20:P0249

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Friday, March 18, 2011 8:41 AM
To: Anita Brunsting; Amy Tschirhart; Candace Curtis
Subject: Re: guardianship assessment form

They are there right now according to the PI. And Michael took him on Wednesday.

--- On **Fri, 3/18/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: guardianship assessment form
To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
Date: Friday, March 18, 2011, 10:33 AM

Do you know if he went to therapy at all this week?

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Carole Brunsting <cbrunsting@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Fri, March 18, 2011 8:26:05 AM
Subject: RE: guardianship assessment form

we're continuing the pi over the weekend or unless it looks like she's headed toward Beaumont - will also use him through next week. $750 is for the lawyer's (Cole) initial consult not a dr. If she divorces him then someone needs to sue for guardianship - Marta would be considered next in line by the law, but if she doesn't sue for it then I don't think she'd be considered. If Drina gets him to sign divorce papers that give him any less than 50% of their assets then a guardian can countersue her to recover those.

From: Candace Curtis [mailto:occurtis@sbcglobal.net]
Sent: Friday, March 18, 2011 10:20 AM
To: Anita Brunsting; Carole Brunsting; Amy Tschirhart
Subject: Re: guardianship assessment form

$750 an hour FOR WHAT? The woman is abusing him and negligent in his care. Have they been out even one time this week? Last I heard, Monday and Tuesday there was no activity other than a visit from Marta. APS said that once they confirmed she was following doctor's orders, they closed the case. If the instructions were 3 times a week and he hasn't been, or only goes once or twice, SHE IS NEGLIGENT, and they better reopen it or start a new one. Let me know if you want me to call.

Any doctor who has seen Carl would most likely say NO to all of the questions. I would, just based on past phone conversations with Carl.

What if Drina files for divorce? Would that be abandonment? Would the trust even be an issue if SHE divorces him?

Not Filed Under Seal

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If I could have anything I wanted for Carl, I would have him assessed by the neuropsychologists at the place I found in Houston. I don't know if he could handle long periods of testing, but he has got to get some cognitive brain function back OR HE WILL NEVER EVEN BECOME CLOSE TO WHOLE AGAIN. It's a good sign that his behavior has improved, but is it because she beats him with a stick and mentally assaults him to get him to act right?

Maybe guardianship is the wrong approach. Maybe we should go after Drina and have her declared incompetent to care for him, or criminally negligent for not obtaining proper rehabilitation. There has to be a reason why she doesn't want her husband of almost 30 years to recover.

Let me know if he will be staying at Mother's again over the weekend. If so, we might want to extend the PI over the weekend so we can see what the hell she does. The more "evidence" we can amass, the better.

Love you guys,

C

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
Sent: Thu, March 17, 2011 2:18:05 PM
Subject: guardianship assessment form

Just thought you'd find this interesting, this is the form that we'd have to have a physician use to assess Carl and possible a MHMR psychologist as well. I just thought it would give you an idea as to what they're looking for - Carl definitely fits the bill -

Just fyi, you may have already known this.

Anita

NOT FILED BY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) and (6)

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants, the Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, "Harris County Defendants") file this Reply to Plaintiffs' Response to their Motion to Dismiss and would respectfully show the Court as follows:

Plaintiffs fail to controvert the facts that belie jurisdiction

Plaintiffs contend the "only facts under consideration" in the subject Motion to Dismiss are *judicial acts* -- those taken by Judge Comstock in deciding "what gets set for hearing and when, and what does not find it way to the calendar." [Doc. 57, ¶¶ 33-34]. Instead of addressing the complete lack of subject matter jurisdiction by this Court, Plaintiffs instead contend the probate court had no subject matter jurisdiction over the underlying probate proceeding. [Doc. 57, ¶¶ 37-38; 41-42]. *Plaintiff Curtis* sought remand of her prior federal suit *to the state probate court*. Plaintiffs then attempt to bootstrap this nonsensical argument to render immunity void in the

present case.

Plaintiff Munson's response to his lack of standing is he was "compelled to combat this public corruption at great personal expense in time and resources." [Doc. 57, ¶ 51]. This does not confer standing.

Lacking any evidence of any conspiracy or any injury, Plaintiffs contend the "mere fact of the attempt to extort is sufficient." [Doc. 57, ¶ 52]. This argument, unsupported by any legal authority likewise fails.

Failure to be "satisfied" with a response is not actionable

In response to the argument that Plaintiffs have failed to state a claim against substitute Court Reporter Tony Baiamonte, Plaintiffs contend that "Munson spoke with Mr. Baiamonte and *was not satisfied with the answer* to inquiries regarding unavailability of a transcript for September 10, 2015." [Doc. 57, ¶ 66] (emphasis added). Apparently, Mr. Baiamonte was sued for the singular reason that he "promised to reply with an email" and when that was not received, he was "added to this complaint." [Doc. 57, ¶ 67]. Not only are the claims against Mr. Baiamonte frivolous, they are certainly sanctionable.

Conclusion & Prayer

Plaintiffs wrongly believe that following a "form" is all they need to do to meet the stringent requirements of a RICO claim. [Doc. 57, ¶ 83]. Plaintiffs have not met the legal standard to bring a claim under RICO or any other state law. Harris County Defendants are entitled to dismissal as a matter of law, because the claims against the Honorable Judges are barred by judicial, official and governmental immunity. Likewise, the claims against Tony Baiamonte are barred by governmental, qualified and official immunity.

Harris County Defendants are entitled to dismissal on these additional grounds: (1) the Complaint fails to state a claim sufficient to meet the requirements of Rules 8 and 9(b), (2) the Complaint fails to state a RICO claim or RICO conspiracy claim against the Harris County Defendants, (3) the Complaint fails to allege standing under RICO, (4) the Complaint fails to allege a conspiracy, (5) the Complaint is not plausible, (6) the Complaint fails to plausibly allege the existence of an "enterprise" or "association-in-fact," and (7) the Complaint is frivolous.

Plaintiffs have failed to present any facts, argument or legal authority to refute these grounds for dismissal and the Harris County Defendants pray the Court grant their Motion to Dismiss the Plaintiffs' Verified Complaint for Damages [Doc. 1] with prejudice, sanction the Plaintiffs for filing a frivolous and groundless lawsuit, and award the Harris County Defendants such other and further relief, at law or in equity, to which they may show themselves to be justly entitled.

Dated: October 17, 2016.

Respectfully Submitted,

/s/ Laura Beckman Hedge
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OF COUNSEL:

VINCE RYAN,
HARRIS COUNTY ATTORNEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 17th day of October, 2016, via ECF.

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/s/ Laura Beckman Hedge
Laura Beckman Hedge

United States District Court
Southern District of Texas
ENTERED
October 18, 2016
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

ORDER

The Court, having considered the Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock and Tony Baiamonte's Unopposed Amended Motion for Leave to File Motion to Dismiss In Excess of Page Limit ("Motion"), finds the relief requested to be in order and therefore GRANTS the Motion.

It is so ORDERED.

OCT 18 2016
Date

The Honorable Alfred H. Bennett
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis et al.,	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:16-CV-01969
v.	§	
	§	The Honorable Alfred Bennett
Kunz-Freed et al.,	§	
Defendants	§	

PLAINTIFFS' ANSWER TO DEFENDANT JILL WILLARD YOUNG, ALBERT VACEK JR, CANDACE KUNZ-FREED, CHRISTINE BUTTS, CLARINDA COMSTOCK AND TONY BAIAMONTES' MOTIONS TO STRIKE

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17-20360.2791

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Federal Rule of Civil Procedure 15(a)(1) 3, 4, 8, 10, 14

I. Introduction

1. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 14, 2016, Defendant Jill Willard Young filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 25)

3. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint. (Dkt 1).

4. On October 3, 2016 Defendant Jill Willard Young filed a Motion to Strike (Dkt 38) the Addendum to Plaintiffs' Complaint (Dkt 26).

5. On October 4, 2016 Defendants Albert Vacek, Jr. and Candace Kunz-Freed (Hereafter V&F) filed a Memorandum (Dkt 42) joining in Defendant Jill Willard Young's Motion to Strike the Addendum to Plaintiffs' Complaint.

6. On October 14, 2016 Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte filed a Motion to Strike the Addendum to Plaintiffs' Complaint (Dkt 60).

II. The Issues Presented

7. In this Motion Defendant Jill Willard Young claims:

a. The Addendum has no legal effect;

b. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss;

c. Plaintiffs' Addendum, like the Complaint, is too implausible to state a valid claim for relief;

d. Plaintiffs' Addendum fails to state facts sufficient to assert a RICO claim against Ms. Young;

e. Plaintiffs' Addendum cannot avoid the Texas Attorney Immunity Doctrine.

III. Plaintiffs' Reply to Motions to Strike

8. Federal Rule of Civil procedure 12(f) allows the Court to strike a pleading that is redundant, immaterial, impertinent, or contains scandalous matter.

9. Plaintiff's Addendum was properly filed as an appendage to the original complaint within twenty-one days of the filing of motions requiring a reply, as authorized by Federal Rule of Civil Procedure 15(a)(1).

10. The Addendum contains a short description of the chronology of the probate docket and copies of: unresolved motions from the probate court record, the preliminary federal injunction, motions and pleadings from the federal court, A Fifth Circuit opinion in this case, and transcripts of hearings. Every paragraph is numbered and every exhibit is labeled and paginated.

11. Defendants' challenge to Plaintiffs' Addendum are based entirely upon semantics and a desire to superimpose Defendants preferred definitions of the instrument over the declarations

provided by the instrument's authors. That definition is provided by the instrument itself (Dkt 26) at page one lines 4-6 as follows:

> *4. Plaintiffs, in response to these challenges, herein incorporate by reference the attached Motions as Memorandums of Points and Authorities in support of the above-referenced complaint, as if those motions had been fully set forth within the original complaint.*
>
> *5. The following motions are presented as Memorandums, to supplement the Rule 8(a) sufficient complaint.*
>
> *6. Plaintiffs hereby incorporate these motions as memorandums under authority of Federal Rule 15(a), for the purpose of satisfying the heightened factual pleading standards of Rule 9(b).*

12. Line four of the Addendum tells us that the Addendum is incorporated into the Complaint by reference as if fully expressed therein. This expression satisfies the "adoption" provisions of Federal Rule of Civil Procedure 10(c), which reads as follows:

> *c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.*

13. By definition, an "Addendum" is a thing to be added. To the extent that it is added it is an amendment authorized by Rule 15(a)(1) and, by its own language, it is an appendage that incorporates but does not alter the portions of the Complaint that precede it.

14. Federal Rule of Civil Procedure 10 governs the "form of pleadings." The Rule seeks to provide a standardized and "easy mode" of pleadings, to facilitate notice to an opposing party, judicial review of the sufficiency of the pleadings, and efficient case management. *See, e.g. Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir. 2011);

15. Federal Rule of Civil Procedure 10(b) requires paragraphs to be numbered. Defendant's Motions to Strike, is an improper attempt to continue to argue the Federal Rule of Civil

Procedure 12(b) motions already filed and answered, contains redundant, immaterial, impertinent, and scandalous allegations without a single specific reference to any numbered paragraph or exhibit, does not contain numbered paragraphs, violates Rule 12(f) and fails to comport to the pleading requisites of Federal Rule of civil Procedure 10(b).

16. The Addendum is an adopted public record, contains a motion pending in a related case, and exhibits public record pleadings from matters in the various courts that are relevant, on point, and which Plaintiffs continually refer to in answers to Defendants Rule 12 motions to dismiss.

17. These Defendants claim they participated in those proceedings in a capacity that affords them some form of immunity from civil suit.

18. Defendants' Motions to strike do not challenge the 22 exhibits attached to the Addendum as not being what the Addendum claims, but simply seek to argue their own interpretation. There are also exhibits attached to the motions and thus subsumed within the Docket 26 exhibits themselves.

19. First Defendants claim the Complaint lacks sufficient factual matter to provide adequate notice of the claims and then, when facts are added to the Complaint by way of supplement, Defendants complain and proceed to rehash their Rule 12(b) arguments under the pretext of a Rule 12(f) motion to strike.

20. The probate court Defendants have adequate notice and the record will also show that in their pleadings V&F quoted from pleadings in the probate court and responded to pleadings in that Court (Exhibit 1) as non-parties and are also fully apprised of the facts upon which the RICO complaint relies.

IV. Docket Entry Twenty-Six

21. Docket 26, pages 3-26 provides a chronology of specific docket events supported by exhibits, including transcripts, motions and pleadings.

22. The Addendum of Memorandum which Defendants seek to attack tells the story of these Defendants' efforts to game the judicial process and contains only public records exhibits from the actions these Defendants claim to have been involved in.

23. Every one of Plaintiffs' replies to Defendants' Rule 12 Motions (Dkt 33, 34, 41, 45, 57 and 62), have shown the relevance of the Addendum by constant reference to Docket entry 26.

V. Defendants claim the Addendum has no legal effect

24. This is not a Rule 12(f) related argument. The Addendum adds detail to the Complaint's factual allegations.

25. The Addendum of Memorandum includes a Motion for Vacatur of the void remand order that directly addresses the Defendants' claims of immunity.

26. Jurisdiction is a foundational issue which must be addressed before any other question, and the proper court to vacate a void order or judgment is the court that entered it.

27. Thus, for all intents and purposes, the Addendum also acts as a form of estoppel in this Court, as it raises a foundational issue that must be resolved before all others.

VI. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss

28. This is a Rule 12(b) and not a Rule 12(f) related argument.

29. Ms. Young's motion to dismiss alleges Plaintiffs failed to plead adequate facts to place her on notice of the claims against her. Ms. Young's motion contained only one exhibit.

30. In response, Plaintiffs merely attached exhibits from the public record with explanations of the significance of each of those exhibits in relation to Ms. Young's "participation".

31. In Ms. Young's Rule 12(b)(6) Motion she included as an exhibit only the Order appointing Gregory Lester. She did not exhibit her application for Gregory Lester's authority to retain her firm, she did not exhibit the order granting Gregory Lester authority to retain Jill Young and she did not include the report she "assisted" Gregory Lester in producing.

32. Thus, while claiming lack of notice as to her part in the charade, she fails to exhibit what does connect her and asks this Court to strike what is, in essence, a public record.

VII. Plaintiffs' Addendum is too implausible to state a valid claim for relief

33. This appears to be a Rule 12(f) argument that the Addendum is immaterial.

34. These Defendants appear to like using words without comprehending what they actually mean. The 28-page Motion for Vacatur contains a statement of chronology supported with reference to the public record and contains excerpts from a March 9, 2016 hearing, supported by an official transcript also attached as an exhibit. The list of exhibits can be found at page 31.

35. Plaintiffs' answers to Defendants' Rule 12 Motions exhibit documents and records these Defendants had a duty to be familiar with and cannot claim ignorance of.

36. Basically the Defendants are asking the Court to strike the facts contained in the public record, placed before it in the form of an Addendum of Memorandum, and to look elsewhere for the same information under a lengthy request for judicial notice of external records containing the same exhibits, allegedly for the "convenience of the Court".

37. Defendants do not challenge the Addendum's exhibits as not being what they are represented to be, but instead claim the Addendum is vague, implausible and fails to raise a RICO claim.

38. Ultimately, Defendants ask the Court to strike fact and listen to "We Say" while viewing the Addendum in a vacuum where the Complaint is considered a separate instrument when in fact they combine to make one Complaint under Rules 10(c) and 15(a)(1).

39. What the 27-page Addendum tells the reader is that Plaintiff Curtis could not get an evidentiary hearing set in state court while being bullied with a false instrument in order to coerce an agreement for illicit reasons.

VIII. Plaintiffs' Addendum Cannot Avoid Texas's Attorney Immunity Doctrine

40. This is not a proper subject for a motion to strike and is an improper attempt to continue arguing the previous Rule 12(b)(1) motions already filed and answered.

41. Defendants' Texas Attorney Immunity claims fail at the threshold question of probate court jurisdiction. Prevailing on a claim that the probate court could assume jurisdiction over the Brunsting trusts in this case, would require reversing a unanimous Fifth Circuit Court of Appeals Opinion in the base case and the Supreme Court opinion the Circuit Court relied upon for their decision.

42. Defendants perpetually seek to avoid the unanimous opinion of the Fifth Circuit Court of Appeals in this case, that no court can take jurisdiction over a res in the custody of another court.

43. The fact that a federal Court issued an injunction regarding the Brunsting trusts the very day probate claims were filed, effectively disposes of any argument that the probate Court could assume subject matter jurisdiction over the Brunsting Trusts.

44. Where there is no subject matter jurisdiction there is no court and no judge and where there is no judge and no court there is no litigation. Judgements entered without or in excess of jurisdiction are nullities, subject to vacatur under both direct and collateral attack. Neither doctrine of laches nor statutes of limitations apply to judgments void for want of jurisdiction and

the very question is so fundamental that it does not come under the "Not Pressed Not Passed Upon Below Rule" and can even be raised for the first time on appeal.

45. The jurisdiction issue is pivotal. None of the motions in this RICO suit can be properly resolved without addressing the want of jurisdiction in the probate court.

46. Unless Defendants overcome centuries of precedent and the Fifth Circuit Opinion "in this case", Defendants' immunity claims fail on Plaintiffs' challenge to probate court jurisdiction over any Brunsting trust related matter.

47. All of these attorneys argue that they have been involved as attorneys in "Estate litigation" yet all the "Estate" pleadings ever mention is the trust and some of these Defendants claim to represent co-trustees, while they all claim to be involved in a probate case. This question was resolved in Plaintiff Curtis favor by the Fifth Circuit Court of Appeals and the entire notion of probate jurisdiction over the Brunsting trusts is fraud.

48. When all claims related to the Brunsting Trusts are removed from Bayless Probate Court Petition and the Gregory Lester, Jill Willard Young "Report" on the efficacy of the estate claims, nothing remains of either.

IX. Memorandum

Federal Rule of Civil Procedure Rule 15: Amended and Supplemental Pleadings

49. Rule 15 allows a party to amend its pleading after it has been filed with the court. In keeping with the flexibility of the federal rules, Rule 15 is generous. The policy is that by allowing the parties to "fix" their pleadings as they go along, the merits of the case will more readily be resolved. The parties will not waste precious time and resources squabbling over the mechanics of amending their pleadings. However, Rule 15's flexibility must also be balanced with fairness concerns for the opposing party. The need to amend generally arises when a party

has made an inadvertent omission or mistake in its pleading. In that case, if the party realizes its mistake fairly quickly, the amendment will generally be allowed under the rule. But, a party may also learn of new information and want to amend its pleading to add a new party or claim accordingly. Whether an amendment is allowed in that situation often turns on whether the statute of limitations for the underlying action has run. If it has, the rule requires more complex analysis to determine whether the amendment will be allowed. If it is, the new pleading will "relate back" to the original date of filing.

50. Rule 15 has four main sections. The first section, 15(a) sets out when and how a party can amend its pleading before trial; The second section, 15(b) allows the parties to amend the pleadings during and after trial; The third section, 15(c) prescribes when a party can amend to add a new claim or party even after the statute of limitations has run; Finally, the fourth section, 15(d) explains when a party can add claims that arise out of an event that occurred after the original pleading was filed.

51. Federal Rule 15(a)(1) allows a party to amend its pleading within 21 days after a responsive pleading requiring a reply and Rule 12(b) motions are just such motions. Not only was the Addendum filed as a Rule 15(a)(1) "Addendum", the RICO complaint itself is little more than a Rule 15(d) amendment to the original petition filed in 4:12-cv-592.

52. Defendants' Motion to Strike is an improper attempt at a second Rule 12(b) Motion to Dismiss. In her first such motion, (Dkt 25) Ms. Young admits to participation in the production of the Gregory Lester "Report of Temporary Administrator", but denies that the "report" is part of any conspiracy targeting the Brunsting Trusts under the pretext of estate litigation.

53. Defendant Jill Young asserted on the first page of her unnumbered Rule 12 motion (Dkt 25),

> *In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.*

54. Defendant Young did not support her claim with an exhibit or with specific reference to any state court determinations and none of the Defendants can point to such an event. Thus, while making knowingly disingenuous claims, Defendants seek to avoid the facts in the record.

X. In the Custody of a Federal Court

55. Plaintiff Candace Curtis and Plaintiff Munson are cohabitant partners. Plaintiff Candace Curtis filed her original petition in the TXSD February 27, 2012 (4:12-cv-592). That Petition was dismissed under the Probate Exception to federal Diversity Jurisdiction. The Fifth Circuit Court of appeals reversed and remanded back to TXSD on January 9, 2013[1]. The Brunsting trusts are not an asset of either "Estate" and are not subject to probate administration.

56. The Harris County District Court suit was filed January 29, 2013, raising only issues relating to the Trust then in the custody of the federal Court.

57. The state probate court suit was filed April 9, 2013, raising only issues relating to the Brunsting Trust, then in the custody of the federal Court, which is the same day Plaintiff Curtis obtained a federal injunction regarding the same Trust.

58. The probate suit raises no issues other than trust issues. Munson ended up in the hospital in a coma and Plaintiff Candace Curtis retained the assistance of a Houston attorney, Jason Ostrom, who had the federal case remanded to the probate court with no opposition from Defendants' counsel.

[1] Curtis v Brunsting 704 F.3d 406

XI. Reality Check

59. Anita Brunsting, with her silent partner Amy Brunsting, plotted and planned to steal the family trust. If not for Anita's over exuberant efforts none of the lawsuits would have been necessary. However, Anita Brunsting would have had to find another way except for the excellent assistance of Candace Kunz-Freed.

60. Candace Kunz-Freed had a fiduciary duty to Nelva Brunsting and if Nelva had asked for improper trust changes Freed had an obligation to inform Nelva that the changes she requested were not authorized under the law of the trust. There is no evidence Nelva requested those changes, but there is plenty of evidence that Anita did.

61. Without the illicit papers drafted by Candace Freed, Anita Brunsting would not have had the ability to run amok and none of the injuries and none of the litigation would have been possible.

62. If Defendant Bobbie Bayless had honorable intentions she would have filed Carl's Joinder as a beneficiary of the Trusts and that would have polluted diversity, causing a remand to the Harris County District Court where Plaintiff Curtis' suit would appear as the lead case on the Title Page. Instead Bayless filed two state court lawsuits in the name of the Estates of Elmer and Nelva Brunsting, raising only issues relating to the Trust in the custody of a federal court. If not for the illicit meddling of Bobbie Bayless and her sham state court litigation, all trust related litigation would have been resolved and everyone would have their property and gone on with their lives.

63. If Jason Ostrom had honorable intentions he would have moved for summary and declaratory judgment in the federal Court, but instead chose to facilitate a remand to a state probate court with no subject matter jurisdiction.

64. Once in probate court Ostrom immediately abandoned the Curtis v Brunsting litigation and began filing papers under the heading "Estate of Nelva Brunsting" asking for distributions from the trust to pay his "fees" while knowing full well the estate does not own any trust assets.

65. If not for Jason Ostrom's attempt to participate in Bayless' sham litigation, this case would have been resolved long ago.

66. The state probate Court had a duty to look to jurisdiction and the first place one looks for probate jurisdiction is in the Will of the Testator. The state Probate Court in looking to the Wills would have seen that the only heir in fact to either Estate is "the trust" and not being property of an "Estate" the Probate Court had a duty to dismiss trust related claims for want of jurisdiction.

67. When the remand was received by the state court the Order included reference to the federal injunction in place and all of the Defendants were aware of that injunction. The Notice of Injunction and Report of Master should have made it abundantly clear the probate court was without the jurisdiction to take cognizance of a trust in the custody of a federal court, on the very day a federal injunction was issued. Unfortunately all these Defendants were looking at was the money cow and like business as usual, were not really looking at the case with any other eyes.

68. What else would explain the absolute refusal of the probate court to set any evidentiary hearings and refusal to enter any orders at all?

69. This effort to coerce and intimidate Plaintiff Curtis with a fraudulent no contest clause threat to property interests on March 9, 2016, was an obvious effort to avoid the complete absence of jurisdiction.

70.

XII. Conclusion

71. Defendants reargue their claims of want of adequate notice, failure to state a claim, and challenge TO federal subject matter jurisdiction relying upon the various claims of immunity. None of these are Rule 12(f) arguments and while using noise words to condemn the Complaint (Dkt 1) and the Addendum (Dkt 26), Defendants to cite no paragraph numbers or exhibit numbers and refuse to number their pleadings to allow Plaintiffs to adequately and properly reply.

72. Defendants claim to have been involved in the very proceedings that Plaintiffs cite to as evidence in support of their claims, and Defendants, while claiming ignorance of facts, ask the Court to strike what is, in effect, the public record, containing the very facts they claim lack of notice of.

73. The Addendum of Memorandum is a proper supplement to the Complaint authorized by Federal Rule of Civil Procedure 15(a)(1) and 10(c) and Defendants' arguments are a non sequitur.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Order denying Defendants' Motions to Strike (Dkt 38, 42, and 60).

Respectfully submitted, October 18, 2016

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 18th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis

Candace L. Curtis

/s/ Rik W. Munson

Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, Defendants' Rule 12(f) Motions to Strike, filed on October 3,, 2016, by Defendant Jill Willard Young (Dkt 38), October 4, 2016, by Defendants Albert Vacek Jr. & Candace Kunz-Freed (Dkt 42) and the Motion to Strike filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte (Dkt 60) October 14, 2016, should be Denied.

It is SO ORDERED

_____ _____

Date

The Honorable Alfred H Bennet
United Stated District Judge

DATA-ENTRY
PICK UP THIS DATE

PROBATE COURT 4

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Harris County

2016-09621 / Court: 4

CAUSE NO. 412,249

ESTATE OF	§	**IN THE PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

NON-PARTY'S CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a THE VACEK LAW FIRM, PLLC'S OPPOSED MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Non-parties Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively referred to as "V&F") and files this Opposed Motion for Continuance:

On or around February 9, 2016, *pro se* Party Candace Curtis filed a Motion to Transfer Cause from District Court to Probate Court # 4 ("the Motion"). On or around March 2, 2016, Curtis filed a memorandum in support of her motion.

In her motion and memorandum, Ms. Curtis is requesting that the civil lawsuit pending in Harris County District Court, filed by Carl Brunsting as Independent Executor for Estates of Elmer H. Brunsting and Velva Brunsting against V&F, be transferred to this Court. As this Court is aware, V&F is opposed to such a transfer. Because Ms. Curtis' Motion directly affects V&F and its defense of the claims brought against it, V&F is entitled to participate in the hearing on the Motion. The suit against V&F in the District Court has been pending since 2013, and V&F feels strongly that it is unnecessary, inappropriate, and a large waste of judicial resources and time to transfer the suit at this juncture.

V&F has been informed that a hearing on the Motion is set for March 9, 2016 at 2:30 p.m. Zandra Foley, lead counsel for V&F, has informed all parties she is unavailable on March 9, 2016 to attend the hearing on the Motion. Ms. Foley will be in mediation that day which has

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been set since January in Cause No. 2015-43077, Harris County District Court. Ms. Foley has attempted to work with Ms. Curtis to move the date of the hearing, but Ms. Curtis has refused to do so. As lead counsel for V&F, it is critical that Ms. Foley be able to appear and argue at the hearing on this important Motion. There is no pressing emergency reason why the hearing must be heard on March 9, 2016, and resetting the hearing will not prejudice any party.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Non-parties Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC respectfully request that this Court enter an order resetting the hearing on the Motion to a date and time convenient to the Court and all parties.

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: *Zandra E. Foley*

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Cory S. Reed
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Houston, Texas 77056
Telephone: (713) 403-8210
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COUNSEL FOR NON-PARTY CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC f/k/a THE VACEK LAW FIRM, PLLC

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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing instrument in accordance with the *TEXAS RULES OF CIVIL PROCEDURE* on the 4th day of March, 2016 to the following counsel of record:

Candace Curtis
218 Landana St.
American Canyon, California 94503

Darlene Payne Smith
Crain, Caton & James, P.C.
1401 McKinney 17th Floor
Houston, Texas 77010

Stephen A. Mendel
Bradley E. Featherston
Then Mendel Law Firm, L.P.
1155 Dairy Ashford, Ste. 104
Houston, Texas 77079

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Ste. 300
Houston, Texas 77079

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

Zandra E. Foley
Zandra E. Foley

CERTIFICATE OF CONFERENCE

I certify that I sent an email to all parties to Cause 412,249 regarding the relief requested in this Motion for Continuance. Candace Curtis indicated that she is opposed to moving the hearing on her Motion to Transfer. I did not hear from any other party as of the filing of this motion.

Zandra E. Foley
Zandra E. Foley

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CAUSE NO. 412,249

ESTATE OF	§	**IN THE PROBATE COURT**
	§	
NELVA E. BRUNSTING,	§	**NUMBER FOUR OF**
	§	
DECEASED	§	**HARRIS COUNTY, TEXAS**

ORDER

Today the Court consider Non-party's Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively referred to as "V&F") Opposed Motion for Continuance. The Court, after examining the motion, is of the opinion that the Opposed Motion for Continuance should be **GRANTED**.

It is therefore ORDERED that the hearing on Candace Curtis' Motion to Transfer Cause from District Court to Probate Court #4 be postponed and continued. Thus, the new hearing setting is _____.

SIGNED this the _____ day of _____, 2016.

_____
JUDGE PRESIDING

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

CANDACE LOUISE CURTIS &	§	
RIK WAYNE MUNSON	§	
	§	
VS.	§	CIVIL ACTION NO. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED,	§	
ALBERT VACEK, JR., ET AL	§	

JOINT DISCOVERY/CASE MANAGEMENT PLAN
UNDER RULE 26(f)
FEDERAL RULES OF CIVIL PROCEDURE

1. State when the parties conferred as required by rule 26(f), and identify the counsel who conferred.

Response: The parties conferred via email regarding this joint case management plan during the period of October 13, 2016, through October 17, 2016. There was no conference regarding this joint case management plan. Plaintiff and Defendants were unable to come to a meeting of the minds and Defendants had difficulty coming to any kind of consensus among themselves. This is not a joint plan. Plaintiffs apologize to the court but don't know what else to do.

The participants to this plan are:

A. Candace L. Curtis, Pro Se Plaintiff.

B. Rik Wayne Munson, Pro Se Plaintiff.

C. Anita Brunsting, Pro Se Defendant.

D. Amy Ruth Brunsting, Pro Se Defendant.

E. Cory S. Reed, counsel for defendants Candace Kuntz-Freed and Albert Vacek Jr.

F. Robert S. Harrell, counsel for Jill Willard Young.

G. Laura Beckman Hedge, counsel for:

(1) Defendant Christine Riddle Butts.
(2) Defendant Clarinda Comstock.

(3) Defendant Tony Biamonte

H. Stephen A. Mendel, Pro Se Defendant
I. Bradley E. Featherston, Pro Se Defendant
J. Bobbie Bayless, Pro Se Defendant.

K. Darlene Payne Smith, Pro Se Defendant.

L. Stacy L. Kelly, counsel for

(1) Gregory Lester
(2) Jason B. Ostrom

N. Neal E. Spielman,

2. List the cases related to this one that are pending in any state or federal court with the case number and court.

Response: A. Plaintiffs allege C.A. No. 4:12-592, *Candace Louise Curtis v. Anita Katy Brunsting, Et Al*; In the U.S. District Court for the Southern District of Texas is the base case and that the present matter is an extension of the earlier case and nothing less.

B. Defendants disagree and believe the only related case is C.A. No. 412,249-401, *Estate of Nelva Brunsting, Deceased*, Probate Court No. 4, Harris County, Texas.

3. Briefly describe what the case is about.

Response: Plaintiff allege a racketeering conspiracy that includes acts of aiding and abetting RICO predicate acts, obstructing justice and other civil and other rights violations designed to bust and loot the Brunsting trusts by preventing resolution on the merits and attempting to force agreement by coercion and duress that would include violating the trust to obtain fees for fake litigation in a court without subject matter jurisdiction over any Brunsting trust related matters. All Defendants are being sued in their individual capacities only.

Defendants allege that the suit is against eleven (11) attorneys, two (2) judges, and a court reporter protected by various forms of immunity

4. Specify the allegation of federal jurisdiction.

Response: Federal question based on plaintiffs' RICO Complaint.

5. Name the parties who disagree and the reasons.

Response: Defendants contend that the Plaintiffs failure to state a claim on which relief can be granted means there are no facts that support federal question jurisdiction, or jurisdiction on any other basis.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

Response: None anticipated at this time.

7. List anticipated interventions.

Response: None anticipated at this time.

8. Describe class-action issues.

The Five Brunsting beneficiaries and their remaindermen are a limited private class.

Defendants disagree

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

Response: The parties will make initial disclosures within fourteen (14) days after the Court issues a scheduling order.

10. Describe the proposed agreed discovery plan, including:

A. Responses to all the matters raised in Rule 26(f).

1) Discovery should be completed within one hundred and twenty (120) days after **resolution of the base case.** (Defendants don't believe there is a base case.)

2) Discovery will be limited to:

a) Facts that prove or disprove any claim or cause of action in any related matter once the dispute over what those matters are and are not, has been resolved.
b) Opinions of experts, if any.

3) The parties will preserve hard copies and/or electronic copies of documents that relate in whole or in part to any issue in the case, and regardless of any claim of privilege or work product doctrine. The documents will be preserved through the date of trial or until this case is dismissed.

4) The parties will preserve any recordings of any communications by, among, or between themselves and the decedent, Nelva Brunsting, if such recordings relate in whole or in part to any issue in the case, and regardless of any claim of privilege or work product doctrine. The recordings will be preserved through the date of trial or until this case is dismissed.

5) Parties agree that oral depositions will be limited as follows:

(a) No more than four (4) hours per plaintiff.
(a) No more than four (4) hours per defendant.

6) Interrogatories will be limited to twenty five (25) questions per party, inclusive of any subparts. Interrogatories, including subparts, in excess thereof shall require leave of Court.

7) Requests for production shall not exceed _____ (__) requests. Requests in excess thereof shall require leave of Court.

8) Requests for admissions shall not exceed _____ (__) requests. Requests in excess thereof shall require leave of Court.

B. When and to whom the plaintiff anticipates it may send interrogatories.

Plaintiffs will serve interrogatories on the following persons within forty-Five (45) days after the Court issues a scheduling order:

1) Anita Brunsting.
2) Candace Kuntz-Freed.
3) Albert Vacek, Jr.
4) Amy Ruth Brunsting.
5) Neal E. Spielman.
6) Stephen A. Mendel.
7) Bradley Featherston.
8) Darlene Payne Smith.
9) Jason B. Ostrom.
10) Gregory Lester.
11) Jill Willard Young.
12) Bobbie Bayless.
13) Hon. Christine Riddle Butts.
14) Hon. Clarinda Comstock.

15) Tony Biamonte.

C. When and to whom the defendant anticipates it may send interrogatories.

Defendants will serve interrogatories on the following persons within fifteen (15) days after the Court issues a scheduling order:

1) Candace L. Curtis.
2) Rik Wayne Munson.

D. Of whom and by when the plaintiff anticipates taking oral depositions.

Plaintiffs will take oral depositions of the following persons within one hundred eighty (180) days after the Court issues a scheduling order:

1. Gregory Lester
2. Jill Willard Young
3. Candace Kunz-Freed,
4. Anita Brunsting,
5. Amy Brunsting,
6. Neal Spielman,
7. Jason Ostram,
8. Bobbie Bayless,
9. Clarinda Comstock
10. Christine Butts
11. Drina Brunsting, attorney in fact for Carl Brunsting

Plaintiff would expect Depositions to trail dispositive hearings in the base case and under no circumstances are these Defendants to be allowed to torment Carl Brunsting. Carl resigned as executor due to a lack of capacity and these defendants pleadings admit to Carl's lack of capacity. Plaintiffs will seek a protective Order. Defendants already had their deposition of Carl Brunsting and Plaintiffs are adamantly opposed to any repeat of such a horrible inhuman event.

E. Of whom and by when the defendant anticipates taking oral depositions.

Defendants will take oral depositions of the following persons within one hundred twenty (120) days after the Court issues a scheduling order:

1) Candace L. Curtis.
2) Rik Wayne Munson.
3) Carole Brunsting.

F. When the plaintiff (or other party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.

1) Plaintiffs will designate any experts and provide the required reports within thirty (30) days after the Court issues a scheduling order.

2) Defendants do not anticipate the need for any expert testimony in this matter, other than testimony on attorneys' for sanctions for the frivolous filing. Such experts will be designated within sixty (60) days after the Court issues a scheduling order.

G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Neither plaintiffs nor defendants anticipate the need for expert depositions at this time. Should the need arise, any such depositions will be completed within one hundred twenty (120) days after the Court issues a scheduling order.

H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).

Neither plaintiffs nor defendants anticipate the need for expert depositions at this time. Should the need arise, any such depositions will be completed within one hundred twenty (120) days after the Court issues a scheduling order.

11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

Response: None.

12. Specific the discovery beyond initial disclosures that has been undertaken to date.

Response: None.

13. State the date the planned discovery can be reasonably completed.

Response: Within one hundred twenty (120) days after the Court issues a scheduling order.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

Response: None. The defendants do not intend to settle.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

Response: None. The defendants do not intend to settle.

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable, and state when such a technique may be effectively used in this case.

Response: None. The defendants do not intend to settle.

17. Magistrate judges may now hear jury and non-injury trials. Indicate the parties' joint position on a trial before a magistrate judge.

Response: Defendants object to a trial before a magistrate judge.

18. State whether a jury demand has been made and if was made on time.

Response: Plaintiffs' made jury demand in their original complaint.

19. Specify the number of hours it will take to present the evidence in this case.
Plaintiff's Response. Will be more easily determined by the number of issues remaining after 12(c) motions for remedy on the pleadings as soon as the base case has been resolved by the same method.

Defendants Response: Eighty (80) hours.

20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

Plaintiff's Response:

The Rule 60 Motion for vacatur of the void remand order (Dkt 26 this court, Dkt 115-119 in the base case) to Harris County Probate Court No. 4 issued May 14, 2014 in base case 4:12-cv-592 (Dkt106). Plaintiff's challenge to probate court jurisdiction over Brunsting trust matters is dispositive and must be resolved before any Rule 12 Motions can be considered.

Plaintiffs' Motion for Consolidation of related cases (Dkt 43) should also be resolved before any substantive issues are addressed

Defendants Response:

A. Rule 12(b)(6) Motions:

1) Defendants' Candace Kunz-Freed and Albert Vacek Jr.'s Motion to Dismiss for Failure to State a Claim [Docket No. 19].

2) Bobbie G. Bayless' Motion to Dismiss for Failure to State a Claim [Docket No. 23].

3) Defendant Jill Willard Young's Rule 12(b)(6) Motion to Dismiss [Docket No. 25].

4) Defendant Anita Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 30].

5) Defendant Amy Brunsting's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 35].

6) Defendants Mendel's & Featherston's Rule 12(b)(6) Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 36].

7) Defendant Neal Spielman's Motion to Dismiss for Plaintiffs' failure to State a Claim [Docket No. 39].

8) Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock & Tony Biamonte's Motion to Dismiss Complaint Pursuant to FED. R. CIV. P. 12(b)(1) and (6) [Docket No. 53].

B. Defendant Jill Willard Young's Motion to Strike Plaintiffs' "Addendum of Memorandum in Support of RICO Complaint," [Docket No. 38].

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C. Rule 12(b)(1) Motion:

1) Defendants' Candace Kunz-Freed and Albert Vacek Jr.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction [Docket No. 20].

2) Defendant Neal Spielman's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction [Docket No. 40].

3) Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock & Tony Biamonte's Motion to Dismiss Complaint Pursuant to FED. R. CIV. P. 12(b)(1) and (6) [Docket No. 53].

D. Plaintiff's Motion for Consolidation of Related Cases Pursuant to 28 U.S.C. § 1637, Rule 42(A) of the FED. R. CIV. P. and Local Rule 7.6 with Supporting Memorandum [Docket No. 43].

21. List other motions pending.

Response: None.

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

Plaintiff Response: There is a Fifth Circuit Opinion, 704 F.3d 406 and a federal injunction issued April 9, 2013 in 4:12-cv-592 that directly relate to this case. The injunction remains active and is an issue directly related to the case before this Court.

Defendants say: none.

23. Certify that all parties have filed Disclosure of Interested Parties as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.

Response: A. Rik Wayne Munson and Candace Louise Curtis, plaintiffs, Plaintiffs' Certificate of Interested Parties [Docket No. 6, filed July 20, 2016].

B. Jason B. Ostrom, defendant, Certificate of Interested Parties [Docket No. 16, filed August 24, 2016].

C. Bobbie G. Bayless, defendant, Disclosure of Interested Parties [Docket No. 21, filed September 7, 2016].

D. Candace Kunz-Freed and Albert Vacek Jr., defendants, Certificate of Interested Parties [Docket No. 22, filed September 7, 2016].

E. Anita Brunsting, defendant, Certificate of Interested Parties [Docket No. 29, filed September 12, 2016].

F. Amy Brunsting, defendant, Certificate of Interested Parties [Docket No. 32, filed September 16, 2016].

G. Stephen A. Mendel and Bradley E. Featherston, defendants, Certificate of Interested Parties [Docket No. 37, filed September 30, 2016].

H. Neal Spielman, defendant, Certificate of Interested Parties [Docket No. 44, filed October 6, 2016].

I. Jill Willard Young, defendant, Certificate of Interested Parties [Docket No. Parties, document 46, October 6, 2016].

24. List the names, bar numbers, addresses and telephone numbers of all counsel.

Response: For the Court's convenience, the list of persons below includes the Pro Se parties:

A. Pro Se Plaintiffs:

1) Candace L. Curtis
Plaintiff, Pro Se
218 Landana Street
American Canyon, CA 94503
925-759-9020

2) Rik Wayne Munson
Plaintiff, Pro Se
218 Landana Street
American Canyon, CA 94503
925-349-8348

B. Plaintiffs Represented by Counsel: None.

C. Pro Se Defendants:

1) Anita Brunsting
Defendant, Pro Se
203 Bloomingdale Circle

A Co-Trustee
Victoria, Texas 77904
361-550-7132

2) Amy Ruth Brunsting
Defendant, Pro Se
2582 Country Ledge
A Co-Trustee
New Braunfels, Texas 78132

D. Defendants Represented by Counsel:

1) Laura B. Hedge (SBN 00790288)
Harris County Attorney's Office
1019 Congress, 15TH Floor
Houston, Texas 77002
O: 713-274-5137
F: 713-755-8924
E: laura.hedge@cao.hctx.net

Def. Hon. Christine Riddle Butts
Def. Hon. Clarinda Comstock
Def. T. Biamonte, court reporter

2) Cory S. Reed (SBN 24076640)
Thompson, Coe, Cousins
& Irons, L.L.P.
One Riverway, Suite 1400
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[SIGNATURE BLOCKS TO FOLLOW]

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANTS' OBJECTION TO PLAINTIFFS' RULE 26(F) PLAN

On October 18, 2016, Plaintiffs filed a "Joint Discovery/Case Management Plan Under Rule 26(f) Federal Rules of Civil Procedure," [DKT. 66] purporting to set out Plaintiffs' and Defendants' positions following the Rule 26(f) conference. But Defendants' did not agree to such joint filing. Instead, the document was filed unilaterally by Plaintiffs without advance notice of *what*[1] or *when* they would be filing.

Crucially, the document does not accurately state Defendants' position. Far from agreeing that the parties should make initial disclosures and conduct discovery following the Rule 26(f) conference, Defendants have objected (and continue to object) to any discovery taking place in this matter until the Court rules on the Motions to Dismiss filed by Defendants. *See* Defendants' Motion to Stay Rule 26(f) Conference and All Discovery Pending Resolution of Motions to Dismiss [DKT. 59]. Defendants have also requested the Court to stay all proceedings in this matter, including the Rule 26(f) conference, pending resolution of the Motions to Dismiss filed by Defendants. *See id.*

[1] Defendants believe Plaintiffs filed a draft Rule 26(f) plan, which was circulated by one of the defendants among the parties for review and comment on October 14, 2016. But before all parties' comments could be received and assembled, the Plaintiffs unilaterally filed the draft plan. Defendants did not consent to such filing, nor did Plaintiffs inform Defendants that they would be making such a filing.

17-20360.2824

In sum, Defendants object to Plaintiffs' characterization of their filing as a "joint" plan. Defendants also object to Plaintiffs' filing of a document purporting to state Defendants' "positions." Defendants' positions have been accurately asserted in Defendants' Motion to Stay, and Plaintiffs' unilateral statements to the contrary should be disregarded by this Court.

Dated: October 13, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above filing has been served on October 19, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell

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

CANDACE LOUISE CURTIS &	**§**	
RIK WAYNE MUNSON	**§**	
	§	
VS.	**§**	**CIVIL ACTION NO. 4:16-cv-01969**
	§	**(Alfred H. Bennett)**
CANDACE KUNZ-FREED,	**§**	
ALBERT VACEK, JR, ET AL	**§**	

UNOPPOSED MOTION TO SUBSTITUTE COUNSEL FOR STEPHEN A. MENDEL AND BRADLEY E. FEATHERSTON

COMES NOW the undersigned counsel, Stephen A. Mendel, and on behalf The Mendel Law Firm, L.P., asks this Court to substitute Adraon D. Greene and David C. Deiss of the law firm of Galloway, Johnson, Tompkins, Burr & Smith, P.C. as counsel of record for Stephen A. Mendel and Bradley E. Featherston ("Mendel and Featherston"), and to allow Stephen A. Mendel of The Mendel Law Firm, L.P. to withdraw as the attorney of record for Mendel and Featherston. Mendel and Featherston represent that this substitution will in no way delay the progress of this matter. Substituting counsel's contact information is as follows:

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Houston, Texas 77010
Telephone: (713) 599-0700
Facsimile: (713) 599-0777

CONCLUSION

For these reasons, undersigned counsel asks this Court to grant this Motion to Substitute Adraon D. Greene as the attorney in charge for Stephen A. Mendel and Bradley E. Featherston and to allow Stephen A. Mendel to withdraw as counsel.

Respectfully submitted,

/s/ Stephen A. Mendel
Stephen A. Mendel (13930650)
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Tel.: 281-759-3213
Fax.: 281-759-3214
ATTORNEYS FOR DEFENDANTS,
STEPHEN A. MENDEL AND
BRADLEY E. FEATHERSTON

CERTIFICATE OF CONFERENCE

I certify that Adraon D. Greene has conferred with Plaintiffs on my behalf and Plaintiffs are unopposed to the filing of this Motion to Substitute Counsel.

/s/ Stephen A. Mendel
Stephen A. Mendel

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2016, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

/s/ Stephen A. Mendel
Stephen A. Mendel

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

CANDACE LOUISE CURTIS &	**§**	
RIK WAYNE MUNSON	**§**	
	§	
VS.	**§**	**CIVIL ACTION NO. 4:16-cv-01969**
	§	**(Alfred H. Bennett)**
CANDACE KUNZ-FREED,	**§**	
ALBERT VACEK, JR, ET AL	**§**	

ORDER ON MOTION TO SUBSTITUTE COUNSEL FOR STEPHEN A. MENDEL AND BRADLEY E. FEATHERSTON

After considering the Unopposed Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherston, the Court

GRANTS the Motion to Substitute, and

ORDERS the withdrawal of Stephen A. Mendel and The Mendel Law Firm, L.P. as counsel of record for Stephen A. Mendel and Bradley E. Featherston. Further, the Court

ORDERS the following counsel be substituted as attorney in charge for Stephen A. Mendel and Bradley E. Featherston:

Adraon D. Greene
Attorney-in-Charge
agreene@gallowayjohnson.com
David C. Deiss
ddeiss@gallowayjohnson.com
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
1301 McKinney St., Suite 1400
Houston, Texas 77010

SIGNED on _____, 2016.

_____
HON. ALFRED H. BENNETT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-CV-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' ANSWER TO DEFENDANT NEAL SPIELMAN'S MOTIONS TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1), 12(b)(6) AND 9(b)

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17-20360.2830

Other Authorities

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I. INTRODUCTION

1. Before the Court are motions to dismiss filed by Defendant Neal Spielman. Docket entry 39 is a Rule 12(b)(6) Motion and docket entry 40 is a Rule 12(b)(1) Motion.

2. Plaintiffs incorporate and adopt by this reference the Complaint (Dkt 1 and 26), the previously filed Rule 12 Motions, Dkts 19, 20, 23, 25, 30, 35, 36, 38 and 53 and Plaintiffs' replies thereto, Dkt 33, 34, 41, 45, 62, 57 and 65, as if fully restated herein.

3. Plaintiffs further request this Honorable Court take judicial notice of the following related public records:

a. Curtis v Brunsting C.A. 4:12-cv-592 TXSD 2/27/2012

b. Carl Henry Brunsting Executor for the Estates of Elmer and Nelva Brunsting v. Candace Freed & Vacek & Freed, Harris Co. District Court CA No. 2013-05455;

c. Carl Henry Brunsting Executor for the Estates of Elmer and Nelva Brunsting CA No, 2012-14538 164TH Judicial District Court of Harris County, Texas;

d. Carl Henry Brunsting Individually and as Executor for the Estates of Elmer and Nelva Brunsting, Harris Co. Probate No. 4 CA No 412248, 412249, 412249-401, 412249-402

II. CHRONOLOGICAL HISTORY

4. Plaintiffs incorporate by reference the "Standards of Review", "Contextual Summary", "History of the Controversy", and "History of the Litigation" (Dkt 33 sections I, II, III and IV) from Plaintiffs' response to Motions to Dismiss by Defendants Vacek & Freed, (Dkt 19 & 20) as if fully restated herein. In short:

5. Curtis v Brunsting 4:12-cv-0592 was filed in the United States District Court for the Southern District of Texas on February 27, 2012 under diversity jurisdiction, was dismissed under the "Probate Exception" to federal diversity jurisdiction March 8, 2012 and went to the Fifth Circuit for review.

6. The Fifth Circuit held that Curtis v Brunsting 4:12-cv-0592 is a lawsuit related only to the Brunsting inter vivos trusts, not property of any estate but the heir in fact, and does not come within the purview of the probate exception to federal diversity jurisdiction, *Curtis v Brunsting* 710 F.3d 406 (Jan 2013).

7. A remand to Harris County Probate Court No. 4 was facilitated by Defendant Jason Ostrom and Plaintiff Curtis now returns the matter to the federal Court with a separate complaint.

III. ISSUES RAISED

Defendant argues:

A. Plaintiffs are involved in a bitterly contested "Probate Matter" involving a dispute between the Brunsting siblings over the administration of their late parents' estate. (Dkt 39 & 40 Pages 1 unnumbered paragraphs 2);

B. Plaintiffs' claims are incomprehensible conspiracy theories;

C. Plaintiff is avoiding a court ordered mediation;

D. Plaintiffs' claims are barred by Attorney Immunity;

E. Plaintiffs fail to plead particular acts of fraud;

F. Plaintiffs fail to plead particular conduct of the Defendant;

G. Plaintiffs lack Privity with Defendant;

H. Plaintiffs lack proper standing;

IV. PLAINTIFF'S REPLY

The Probate Matter

8. Defendant Spielman begins both motions with an identical summary in which he states:

> *"This case stems from "conspiracy" claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs "claims," which are nearly incomprehensible…"*

9. In his BACKGROUND section he states:

> *"Plaintiffs' suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al., ("the Probate Matter"). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents' estate".*

10. Given that both motions are built entirely upon this erroneous factual ground it is unnecessary to address the supporting authorities.

11. The record will show the case before the Court involves claims against Defendants in their individual capacities, arises out of a probate court, and does not arise from a controversy over the administration of any "estate".

12. These matters were res judicata before any state court actions were even filed.[1]

13. Claims were first filed in Harris County Probate No. 4 April 9, 2013, the same day a federal judge issued an injunction against Anita and Amy Brunsting to preserve and prevent wasting of assets of the Brunsting trusts then in the custody of a federal court. (Dkt 26-2, 26-7, 33-5, 34-6)

14. The claims filed in Harris County courts by Defendant Bayless were filed on January 29, 2013 and April 9, 2013. The Harris County District Court suit No. 2013-05455 is styled:

[1] Curtis v Brunsting 704 F.3d 406

> *"CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E.BRUNSTING"*

15. Like Defendant Bayless, (Dkt 23) Defendant Spielman states in the opening sentence of his Rule 12(b)(1) motion that the "Probate Matter" is styled "*Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.," ("the Probate Matter").* The Harris County Probate suit (412249-401) is actually styled as Docket entry 34 Exhibits 5 and 7 show:

> *CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting"*

16. It is important to note that federal Plaintiff Candace Louise Curtis is named a "Nominal Defendant" in Bayless, exclusively trust related Probate Court suit, filed on the same day Plaintiff Curtis obtained a protective Order in the federal Court regarding the same Trust.

17. Both state court petitions raise only issues related to the Brunsting trusts and both state court actions were filed while the Brunsting trust res was in the custody of a federal court.

18. The Fifth Circuit noted that the wills of both decedents (Dkt 41-3 and 41-4), bequeathed everything to one heir and that the only heir in fact to either estate was "the trust".

The Trust Matter

> *Curtis v. Brunsting*
>
> *United States Court of Appeals for the Fifth Circuit*
>
> *January 9, 2013, Filed No. 12-20164*
>
> *Reporter*
>
> *704 F.3d 406; 2013 U.S. App. LEXIS 524; 2013 WL 104918*
>
> *Procedural Posture*
>
> *Plaintiff, the beneficiary of a trust, sued defendant co-trustees of the trust, for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. The United States District Court for the Southern District of Texas dismissed the case for lack of subject matter jurisdiction, concluding that the case fell within the probate exception to federal diversity jurisdiction. The beneficiary appealed.*
>
> *Overview*

> *The court found that the case was outside the scope of the probate exception under the first step of the inquiry because the trust was not property within the custody of the probate court. Because the assets in a living or inter vivos trust were not property of the estate at the time of decedent's death, having been transferred to the trust years before, the trust was not in the custody of the probate court and as such the probate exception was inapplicable to disputes concerning administration of the trust. The record also indicated that there would be no probate of the trust's assets upon the death of the surviving spouse. Finding no evidence that the trust was subject to the ongoing probate proceedings, the case fell outside the scope of the probate exception.*
>
> *Outcome*
>
> *The district court below erred in dismissing the case for lack of subject-matter jurisdiction.*

Defendant's Challenges D, E and F

D. Plaintiffs' Claims Are Barred by "Attorney Immunity" Doctrine;

E. Plaintiffs Fail to Plead Particular Acts of Fraud;

F. Plaintiffs Fail to Plead Particular Conduct of the Defendant;

19. The United States Attorney's Resource Manual at CRM 2403 defines Extortion by Force, Violence, or Fear as follows:

> *In order to prove a violation of Hobbs Act extortion by the wrongful use of actual or threatened force, violence, or fear, the following questions must be answered affirmatively:*
>
> 1. *Did the defendant induce or attempt to induce the victim to give up property or property rights?*
> 2. *Did the defendant use or attempt to use the victim's reasonable fear of physical injury or economic harm in order to induce the victim's consent to give up property?*

20. Defendant Spielman's performance on March 9, 2016 (Dkt 26 and exhibit 26-16) inarguably answers these inquiries in the affirmative. Plaintiffs' allegations regarding Mr. Spielman are articulated in the Complaint with the specificity required by rule 9(b).

21. Mr. Spielman's specific threats of injury to property rights if Curtis did not mediate a settlement agreement, using a knowingly false instrument, is conduct entirely foreign to the

duties of an attorney and the mere attempt constitutes the tort and crime of extortion whether successful or not.

Failure to State a Claim

22. Defendant Spielman claims to have been involved in the very actions described above and claims to have been representing Defendant Amy Brunsting in a "Probate Matter".

23. Plaintiff points only to the record of those proceedings in answer to each motion to dismiss and Defendant Spielman cannot claim to have been both counsel and ignorant of the facts contained in those records.

24. If it is the interpretation of those fact records that Defendant Spielman wishes to argue, a motion to dismiss for failure to state a claim is neither the proper vehicle nor the proper stage of the proceedings for arguing his contrary facts.

Plaintiffs Lack Privity with Defendant Spielman

25. The impregnable citadel of Privity. Privity is a legal expression defining a close, mutual, or successive relationship to the same right of property or the power to enforce a promise or warranty.

26. While the Doctrine of Privity is an important concept in contract law, a deliberate intent to defraud is not a good faith error in judgement and like the Attorney Immunity Doctrine, the Privity Doctrine is intended to preserve the integrity of the client professional relationship and in the case of an attorney, to provide confidence in one's ability to be a zealous advocate for his client's position. The protection of the Doctrine of Privity does not apply as an impunity shield for conduct that is both tortious and criminal resulting in injuries to third parties.

27. Because Privity is actually a term to summarize a conclusion that one party was precluded, it may exist for the purpose of determining one legal question but not another

depending on the circumstances and legal doctrines at issue." *Meza v. General Battery Corp*., 908 F.2d 1262 (5th Cir. 1990).

V. STANDING

Plaintiff Candace Louise Curtis

28. Defendant's challenge to Plaintiff Curtis' standing relies entirely upon erroneous juristic concepts, wayward fact assertions and misplaced logic.

29. Rights are of two divisions. First are those annexed to the persons of men called Jura personarum or the rights of men and second is the right to control external objects over which man may obtain a dominion and this is called Jura rerum or the right of things[2]. Property is not the thing itself but the interest one acquires in dominion and control over the thing.

30. Plaintiff Curtis is a cestui que trust, also known as a beneficiary. Her property interest is a one-fifth part of the undiminished res of inter vivos trusts as a matter of equity.

31. A beneficial interest in the assets of an inter vivos trust is property and not inheritance expectancy. The concerted effort to deprive Plaintiff Curtis of the enjoyment of her very tangible trust property, continuing for a period of five years, is an injury in fact.

32. Plaintiff Curtis began this journey with no legal education of any kind but knew full well by the time that her mother passed that her sisters, Defendants Anita and Amy Brunsting, had been plotting and were actively engaged in trying to deprive her and her disabled brother Carl Brunsting of beneficial interests in the Brunsting trust res. It now appears Carole Brunsting was also intended to be deprived of her interest in the trust res as well.

[2] See Blackstone's Commentaries on the Laws of England, Book the First, Chapter I, Part III, Pg 134.

Plaintiff Rik Wayne Munson

33. Defendant Spielman stood before the Probate Court on March 9, 2016 talking about his fees (Dkt 26-16 pg 14 ln 20) and how *"Ms. Curtis Pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is…"* (Dkt 26-16 page 15). Later (p. 17) Spielman talks about how it would be an insult to respond to the Motions Plaintiff Cutis filed … "*and all of the money that that's going to cost…"* and now claims to have been an attorney participating in those proceedings, immune from consequences for his mens rea motivated acts.

34. It is interesting that Mr. Spielman spoke about the cost of this litigation, as if somehow Plaintiff Curtis does not understand the war of attrition he and his co-defendants thought they would play to deprive her of her property rights.

35. Plaintiff Curtis and Plaintiff Munson have been co-habitant partners for ten years.

36. Munson's tireless labor and effort to defend his household is the only thing that has protected Plaintiff Curtis' property interests from the intended hijacking.

VI. TANGIBLE PROPERTY IS NOT THE THING ITSELF

37. Mankind is born into the world possessing only those rights inherited from nature and it is through the institution and the natural order of family that man develops into an independent and autonomous person with knowledge and ability to defend those rights.

38. The knowledge, experience, skill and labor of a man are the only property man owns in nature by which they can obtain a dominion over other things, including those required by the necessities of life and which directly affect the quality of living in a society.

39. Munson has assisted Plaintiff Curtis in obtaining a favorable appellate opinion (Dkt 34-4) and an injunction (Dkt 26-2) and continues to help protect Plaintiff Curtis' property rights while

also advancing matters of public interest. It is an insult that Defendants consider their worth so high and Plaintiff Munson's so low as to discount that knowledge, experience and the labor devoted to defending against their unholy assault as other than a property interest, rendering such activities and use of resources meaningless.

40. Munson, like Plaintiff Curtis has suffered personal injury as direct and proximate result of the intentional manipulation of the judicial process, multiplication of litigation and superficial pomposity of these Defendants' pretense of legitimacy.

41. The interference began when Defendant Bobbie Bayless filed her exclusively trust related claims in state courts in the name of the Estates of Elmer and Nelva Brunsting, knowing full well the Brunsting trusts were under the exclusive jurisdiction of a federal Court.

42. Munson's time is valuable and the application of his knowledge, experience and labor to these five years of litigation is and has been invaluable to Plaintiff Curtis' protection of her property rights. That effort has cost Munson invaluable and irreplaceable life property interests by diverting valuable time, energy and attention away from other life pursuits.

43. Our families and the communities in which we live have a property interest in the honest services of our public officials and licensed practitioners. There is no valid legal theory that shows public policy interests are not in any way implicated, or that public policy is not wounded by the conduct complained of before this Court.

44. Each Defendant has participated in the jurisdictional sham and the attempted extortion/mediation diversion scheme, using the Bayless vehicle to insinuate their personal interests into the private Brunsting controversy.

VII. IMMUNITY

45. Refusal to provide government services to the public without a transfer of wealth from the private to the public sector are neither judicial nor litigious, but the very definition of public corruption.

46. Defendants appear before this Honorable Court attempting to sell their illicit "Probate Matter" wares, claiming the protection of the judicial and litigation immunity privileges when, as a matter of law, they have been engaged in neither activity.

47. Where there is no subject matter jurisdiction, there is no court and where there is no court there is no judge and no litigation. Claims of attorney and other immunities in this case rely upon facts not in evidence and Plaintiffs demand what they could never get in Harris County Probate Court, an evidentiary hearing with findings of fact and conclusions of law after hearing.

48. For these reasons the conduct of Defendant Spielman, as exemplified by the public record, is not conduct protected by any doctrines of immunity, and reference to a *"Probate Matter"* is a fraud upon this Court.

49. Defendant's different view of the significance of facts contained in the public records in point is not plausible. Defendant does not support contrary claims with any form of competent evidence and such claims are thus not properly raised under Rules 12(b)(1) or 12(b)(6).

VIII. CONCLUSION

50. As the case in point shows, citizens who resort to the courts to enforce rights vindicate wrongs and settle their differences, are all too often confronted by judges and attorneys with an attitude that demonstrates no regard for individual rights or the rules of law.

51. These same individuals now come before this Court claiming entitlement and asking this Court to grant them the very thing they themselves refuse others, the due process and protection of law.

52. One is loath to contemplate the dangers and likely costs of continuing to deny remedy in the face of the present pandemic of public corruption, for the only remedy left to ordinary people would be governed not by reason, but by necessity.

Wherefore, Plaintiffs respectfully request this honorable court deny the Motions to Dismiss, Docket entries 39 and 40, filed by Defendant Neal Spielman on October 3, 2016, and hold Defendant to answer.

Respectfully submitted,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 24th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on October 3, 2016, by Defendant Neal Spielman in the above styled cause (Dkt 39 and 40), should be Denied.

It is SO ORDERED

_____
Date

_____
The Honorable Alfred H Bennet
United Stated District Judge

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S OPPOSITION TO PLAINTIFFS' MOTION TO CONSOLIDATE

Plaintiffs' Motion to Consolidate (the "Motion") asks this Court to consolidate this matter into case number 4:12-cv-0592, a closed case formerly pending before Judge Hoyt. But Plaintiffs' Motion should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact.

I. Consolidation Should be Denied Because the "Prior Case" Is Closed.

Plaintiffs ask this Court to consolidate this matter into case number 4:12-cv-0592, before Judge Hoyt. But case number 4:12-cv-0592 is closed, and it has been closed since May 15, 2014.

A Motion to Consolidate a pending matter into a closed matter should be denied. *See* Order Denying Motion for Leave to File Motion to Consolidate, *EP-Team, Inc. v. Aspen Infrastructure, Ltd.*, No. H-07-2549 [DKT. 17] (S. D. Tex. Jan. 10, 2008). In *EP-Team*, a court in this District was asked to consolidate a matter into an earlier-filed case that was closed. *Id.* The court denied consolidation, stating, "This case, Civil Action No. 07-2549, is the earlier case and **it is closed, therefore, the Court cannot consolidate anything with it**." *Id.* (emphasis

added); *see alsoClarke v. Dir., TDCJ-CID*, No. 4:09-CV-404, 2012 WL 4120430, at *1 & *5 (E.D. Tex. Sept. 19, 2012) (denying a motion to consolidate because the "corresponding case" was "closed"); *Hamilton v. United Healthcare of Louisiana, Inc.*, CIV.A. 01-585, 2003 WL 22779081, at *2 n.3 (E.D. La. Nov. 21, 2003) (determining that "consolidation **was done in error**" because the first-filed case "was closed" prior to consolidation) (emphasis added). And the "prior matter" is closed because Plaintiff Candace Curtis *herself* requested the court remand the matter to Harris County. *See* Order Granting Unopposed Motion to Remand by Candace Louise Curtis, *Curtis v Brunsting*, No. 4:12-cv-0592 (DKT. 112) (S.D. Tex. May 15, 2014).

Thus, Plaintiffs' Motion to Consolidate should be denied.

II. The Closed Case and This Pending Matter Should not Be Consolidated.

In determining whether to consolidate, Courts consider five factors:

> (1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law and/or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately."

Zolezzi v. Celadon Trucking Services, Inc., No. Civ.A.H-08-3508, 2009 WL 736057, at *1 (S.D. Tex. Mar. 16, 2009) (citing *In re Enron Corp. Securities, Derivative & "ERISA" Litigation*, Civ. A. Nos. H–01–3624, H–04–0088, H–04–0087, H–03–5528, 2007 WL 446051, at *1 (S.D. Tex. Feb.7, 2007)). Here, those factors overwhelmingly show that the two matters should not be consolidated.

First, the actions are not **pending** before the same court. Indeed, as shown above, the "prior case" is not pending at all—it is closed.

Second, although some of the parties to the two matters are common between the two cases, several are not. As an example, Defendant Young is not a party to the prior case; nor is

Defendant Lester. Judge Butts and Judge Comstock were not parties to the prior matter, either. And Jason Ostrom, who appears on the docket sheet as counsel for Plaintiff Curtis in the now-closed "prior case," *has now been sued* by Plaintiffs in this case.

Third, there are not common questions of law or fact. This matter involves RICO assertions made by Plaintiffs, who make the novel contention that a state probate court is a conspiracy called the "Harris County Tomb Raiders" and the "Probate Mafia," who "transfer wealth" from estates by engaging in "poser advocacy." There are *no* questions of law or fact in the closed matter, because it has been remanded to state court. But even if the Court looked to the questions of law and fact in the state court matter, those questions relate merely to estate law—not alleged federal RICO statutes and criminal conspiracies.

Fourth, there is an extraordinary risk of confusion that would result from consolidation of the cases. As examples, in the RICO case, many of the probate court litigants, the attorneys, and the judges are all Defendants, who are all more-or-less aligned in opposing Plaintiffs' RICO allegations. But in the probate matter itself, the parties share no such affinities. Certainly, it would be confusing for a fact-finder to be asked to determine, on the one hand, whether Plaintiff Curtis's own counsel was involved in the criminal enterprise "Probate Mafia," when that counsel also previously represented the Plaintiff in the closed federal court matter.

Fifth, consolidation will not conserve judicial resources since the prior matter is closed.

Thus, Plaintiffs' Motion should be denied.

III. Conclusion

For the above-stated reasons, Plaintiffs' Motion should be denied.

Dated: October 25, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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Telephone: (713) 651-5151
Facsimile: (713) 651-5246

ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document has been served on October 25, 2016, in accordance with the Federal Rules of Civil Procedure.

/s/ Robert S. Harrell
Robert S. Harrell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
	§	
VS.	§	**CIVIL ACTION NO. 4:16-cv-01969**
	§	**(Alfred H. Bennett)**
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	

DEFENDANTS MENDEL'S & FEATHERSTON'S JOINDER IN JILL WILLARD YOUNG'S MOTION TO STRIKE PLAINTIFFS' ADDENDUM OF MEMORANDUM IN SUPPORT OF RICO COMPLAINT

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants Stephen A. Mendel and Bradley E. Featherston (collectively the "Mendel & Featherston Defendants") hereby file this Adoption and Joinder in Jill Willard Young's Motion to Strike Plaintiffs' Addendum of Memorandum in Support of RICO Complaint ("Addendum") and would respectfully show the Court as follows:

I.
THE COURT SHOULD STRIKE PLAINTIFFS' ADDENDUM

1. In the interests of justice and judicial economy, and pursuant to Federal Rule of Civil Procedure 10(c), the Mendel & Featherston Defendants hereby adopt and incorporate by reference, as if recited herein the arguments and authority contained in Jill Willard Young's Motion to Strike [Doc. 38]. The Court should strike Plaintiffs' Addendum, because it is not a valid pleading under the Federal Rules of Civil Procedure.

2. More importantly, the Court should dismiss Plaintiffs' claims against the Mendel & Featherston Defendants. The Addendum does not affect the merits of the Mendel & Featherston Defendants' Motions to Dismiss as none of the allegations against the Mendel &

Featherston Defendants form the basis for a valid complaint or support a RICO claim against the Mendel & Featherston Defendants.

3. Plaintiffs' claims should be dismissed because they have not adequately pleaded a violation of the RICO Act. Even assuming that Plaintiffs' Addendum is considered to be a supplement to Plaintiffs' Complaint, it does not change the fact that Plaintiffs have failed to meet the required pleading standards.

II.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants Stephen A. Mendel and Bradley E. Featherston hereby request that the Court strike Plaintiffs' Addendum.

Respectfully submitted,

/s/ David C. Deiss
Adraon D. Greene
Attorney-in-Charge
TBN: 24014533
Fed. I.D. No. 25029
agreene@gallowayjohnson.com
David C. Deiss
TBN: 24036460
Fed. I.D. No. 33627
ddeiss@gallowayjohnson.com
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
1301 McKinney St., Suite 1400
Houston, Texas 77010
Tel.: (713) 599-0700
Fax.: (713) 599-0777

ATTORNEYS FOR DEFENDANTS, STEPHEN A. MENDEL AND BRADLEY E. FEATHERSTON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 27th day of October, 2016, via ECF.

Candace Louise Curtis
218 Landana Street
American Canyon, CA 94503
Plaintiff, Pro Se

Rik Wayne Munson
218 Landana Street
American Canyon, CA 94503
Plaintiff, Pro Se

Defendant Neal Spielman:
c/o Martin Samuel Schexnayder
Winget, Spadafora & Schwartzberg LLP
Two Riverway, Suite 725
Houston, TX 77056

Defendant Jill Williard Young
c/o Rafe A Schaefer
Norton Rose Fulbright US LLP
1301 McKinney
Houston, TX 77010

Defendant Bobbie Bayless
c/o Bobbie G Bayless
Bayless Stokes
2931 Ferndale
Houston, TX 77098

Defendant
Anita Brunsting
203 Bloomingdale Circle
Victoria, TX 77904
Pro Se

Defendant
Bernard Lyle Matthews III
11777 Katy Freeway, Suite 300 South
Houston, Texas 77079
Pro Se

Defendant Albert Vacek, Jr.
c/o Cory S Reed
Thompson Coe Cousins Irons
One Riverway, Suite 1600
Houston, TX 77056

Defendant Candace Kunz-Freed:
c/o Cory S Reed
Thompson Coe Cousins Irons
One Riverway, Suite 1600
Houston, TX 77056

Defendant Jason Ostrom
c/o Jason B Ostrom
Ostrom Sain LLP
5020 Montrose Blvd, Suite 310
Houston, TX 77006

Defendants Christine Riddle Butts, Clarinda Comstock, Toni Biamonte
c/o Laura Beckman Hedge
Harris County Attorney's Office
1019 Congress St., 15th Floor
Houston, TX 77002

Defendant
Amy Brunsting
2582 Country Ledge Drive
New Braunfels, TX 78132
Pro Se

Defendant
Darlene Payne Smith
Crain Caton & James
1401 McKinney, Suite 1700
Houston, Texas 77010

Defendant
Gregory Lester
955 N. Dairy Ashford, Suite 220
Houston, Texas 77079

/s/ David C. Deiss
Adraon D. Greene
David C. Deiss

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

DEFENDANT JILL WILLARD YOUNG'S MOTION FOR SANCTIONS

On July 5, 2016, Plaintiffs filed a frivolous, 64-page "Verified Complaint" consisting of facially preposterous criminal accusations, blatant mischaracterizations of fact, and boilerplate recitations of law in the Complaint that are plainly insufficient to survive dismissal. On September 15, 2016, Defendant Young filed her Motion to Dismiss.[1] And on September 27, 2016, Defendant Young sent Plaintiffs a letter, informing them that, in accordance with the safe-harbor procedure of Federal Rule of Civil Procedure 11, she would be filing this Motion for Sanctions on October 19, 2016, if Plaintiffs did not dismiss their Complaint against her with prejudice. But Plaintiffs have ignored Ms. Young's letter and Motions.

Plaintiffs' frivolous pleadings meaninglessly and wrongfully denigrate the reputation of Ms. Young, a prominent, hard-working Houston lawyer. Despite opportunities to nonsuit their meritless suit, Plaintiffs have refused to do so. Thus, Plaintiffs should be required to reimburse Ms. Young's attorney's fees pursuant to Federal Rule of Civil Procedure 11.[2]

[1] Ms. Young incorporates by reference the arguments and authorities asserted in her Motion to Dismiss.

[2] Ms. Young will file proof of the amount of attorneys' fees in the event the motion is granted.

ARGUMENT AND AUTHORITIES

Filing a RICO action in federal court is not a proper substitute for appealing an unfavorable ruling, nor is it an appropriate means of seeking revenge against opposing and court-appointed counsel. *See Chapman & Cole v. Itel Container Int'l B.V.*, 865 F.2d 676, 685 (5th Cir. 1989) ("[I]t should be noted that an attorney's responsibility to conduct a reasonable prefiling investigation is **particularly important in RICO claims**.") (emphasis added). Because the claims asserted by Plaintiffs are both legally and factually frivolous, Ms. Young should be awarded attorneys' fees and costs under Fed. R. Civ. P. 11.

I. The Rule 11 Standard

Under Fed. R. Civ. P. 11(b), by presenting the Court a signed pleading, an "unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1)-(3). "Compliance with these affirmative duties is measured as of the time that the document is signed." *Childs v. State Farm Mut. Auto. Ins. Co.*, 29 F.3d 1018, 1024 (5th Cir. 1994). And whether a pleading meets this requirements is measured "by an objective, not subjective, standard of reasonableness under the circumstances." *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 873 (5th Cir. 1988).

"[I]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1); *see also* Fed. R. Civ. P. 11 Advisory Committee Notes ("Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client.").

II. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims.

Plaintiffs have ignored longstanding attorney immunity doctrines, have alleged six causes of action for which they have no private cause of action, and failed to plead facts showing even the most basic elements of their RICO "claim."

A. Plaintiffs ignore attorney immunity.

Plaintiffs have ignored long-established immunity doctrines that protect attorneys from suit by opposing parties and non-clients. Indeed, the affirmative defense of immunity is apparent on the face of the Complaint.

Under Texas law, it is settled that "attorneys are immune from civil liability . . . 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). The only exceptions to this rule of immunity are if an attorney engages in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services and would thus fall outside the scope of client representation." *Id.* at 482 (quoting *Poole v. Hous. & T.C. Ry. Co.*, 58 Tex. 134, 137 (1882)). However, a plaintiff cannot evade attorney immunity by simply "labeling an attorney's conduct 'fraudulent.'" *Id.* at 483 (quoting *Alpert*, 178 S.W.3d at 406).

In this case, Plaintiffs have not pled any facts showing Ms. Young, who served as counsel for the Temporary Administrator in the underlying lawsuit, took any actions outside the normal discharge of her duties in representing her client. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016) (attorney's conduct in sending a letter, participating in discovery, and communicating with SEC about client were "classic examples of an attorney's conduct in representing his client").

B. Plaintiffs plead claims for which there exists no private right of action.

Plaintiffs allege three causes of action for "honest services," along with causes of action for wire fraud, fraud under 18 USC § 1001, and violation of the Hobbs Act. *See* Complaint, at ¶¶ 121–123. But those are criminal causes of action that cannot be pursued by a private plaintiff. *See* Motion to Dismiss [DKT. 25], at pp. 13–16.

C. Plaintiffs' accusations are baseless and delusional.

Plaintiffs accuse Ms. Young of what can best be described as fictional acts--being a member of a secret society and "cabal" known as the "Harris County Tomb Raiders," which Plaintiffs also call "The Probate Mafia." *See, e.g.*, Complaint, at ¶¶ 57, 58, 89. Plaintiffs allege the members of this purported shadow organization engage in "Poser Advocacy," supposedly an "exploitation opportunity" to "hijack" "familial wealth." *Id.* at ¶¶ 95–99. Not surprisingly, Plaintiffs do not even try to accompany their made-up story with supporting facts. The reality is unavoidable—their complaint is a bizarre attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court.

Less fantastical efforts to concoct a federal claim against judges and opposing attorneys have been routinely dismissed. *See, e.g.*, *Freeman v. Texas*, No. H-08-2050, 2008 WL 4155346, at *2 (S.D. Tex. Sept. 2, 2008) (Rosenthal, J.) (dismissing RICO claims against probate judges, attorneys, and clerks for failure to plead a racketeering activity). And other courts in this Circuit

have held that almost identical allegations made by pro se litigants should be dismissed *and* were sanctionable. *See Whitehead v. White & Case, LLP*, 12-CV-0399, 2012 WL 1795151, at *2 (W.D. La. Apr. 19, 2012), *report and recommendation adopted*, 12-CV-0399, 2012 WL 1795148 (W.D. La. May 16, 2012) (dismissing a pro se plaintiff's conspiracy claims against judges, magistrate judges, attorneys and law firms, as "frivolous and vexatious" and sanctioning the pro se plaintiff).

Thus, Plaintiffs' allegations fail to satisfy Rule 11. Specifically, Plaintiffs' Complaint against Ms. Young—devoid of any allegation of actual wrongdoing—can only be brought for improper purposes, like harassment or to needlessly increase the cost of litigation. Plaintiffs' Complaint is in no way warranted by existing law, and Plaintiffs' contentions completely lack any sort of factual or evidentiary support. *See* Fed. R. Civ. P. 11(b)(1)-(3). Ms. Young has also specifically informed Plaintiffs multiple times of the legal defects in their Complaint and the authority showing Plaintiffs' arguments are meritless, both in Ms. Young's filing of her Motion to Dismiss and by serving this Motion for Sanctions on Plaintiffs twenty-one days before filing it with the Court. But Plaintiffs have refused to dismiss their Complaint against Ms. Young. This, too, means sanctions are necessary. *See also Taylor v. C.I.R.*, 350 Fed. Appx. 913, 915 (5th Cir. 2009) ("Sanctions on pro se litigants are appropriate if they were warned that their claims are frivolous and they were aware of 'ample legal authority holding squarely against them.'").

CONCLUSION

Plaintiffs have filed a frivolous and facially-deficient lawsuit, and Ms. Young respectfully requests that the Court require Plaintiffs and their attorneys to pay her attorneys' fees in defending this suit and pursuing the relief requested herein.

Dated: October 27, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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Facsimile: (713) 651-5246

ATTORNEYS FOR DEFENDANT JILL WILLARD YOUNG

CERTIFICATE OF CONFERENCE

I certify that on September 27, 2016, I conferred with counsel for Plaintiffs about the relief requested in this Motion. Counsel for Plaintiffs declined to dismiss the claims against Ms. Young, requiring the submission of this Motion to the Court.

/s/ Robert S. Harrell
Robert S. Harrell

CERTIFICATE OF SERVICE

I certify that on September 27, 2016, pursuant to Fed. R. Civ. 11(c)(2) and Fed. R. Civ. P. 5, I served copies of this Motion for Sanctions on Plaintiffs. I also certify that a true and correct copy of the above Motion for Sanctions has been served on October 27, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Robert S. Harrell
Robert S. Harrell

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

CANDACE LOUISE CURTIS, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	
	§	

ORDER ON DEFENDANT JILL WILLARD YOUNG'S MOTION FOR SANCTIONS

Before the Court is the Motion for Sanctions filed by Defendant Jill Willard Young (the "Motion"). The Motion is **GRANTED**. Pursuant to Fed. R. Civ. P. 11, the Court enters the following findings:

1. Plaintiffs have violated Fed. R. Civ. P. 11(b)(2) by filing legally frivolous claims against Defendant Young.

2. Plaintiffs have refused to dismiss their claims against Defendant Young, despite being afforded a 21 day "safe harbor," pursuant to Fed. R. Civ. P. 11(c).

3. Plaintiffs' Complaint and "Addendum" fail to satisfy Rule 11 because:

   a. They were filed for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

   b. The claims, defenses, and other legal contentions are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and

17-20360.2859

c. The factual contentions have no evidentiary support nor will they likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

4. Defendant Young will have 30 days to submit evidence, which may be by affidavit, of the reasonable and necessary attorneys' fees for legal services provided on this matter.

5. Should Defendant Young successfully defend an appeal of this case, reasonable and necessary attorneys' fees will include $30,000 for handling an appeal to the Fifth Circuit Court of Appeals, $15,000 for reviewing and responding to a Petition for Writ of Certiorari to the U.S. Supreme Court, and $25,000 in the event a Petition for Writ of Certiorari is granted but the Court of Appeals judgment is upheld.

SO ORDERED.

Date: _____, 2016.

_____
ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

United States Courts
Southern District of Texas
FILED

OCT 2 8 2016

David J. Bradley, Clerk of Court

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Bradley E. Featherston, Featherston Tran PLLC was received by me on *(date)* 10/08/2016 .

☐ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

☑ I served the summons on *(name of individual)* Bradley E. Featherston, personally by hand , who is designated by law to accept service of process on behalf of *(name of organization)* Featherston Tran PLLC at 10035 Magnolia Way, Houston, Tx 77070 at 5:50 pm on *(date)* 10/18/2016 ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 10/22/2016

Andrew L. Garza SCH 4491 Exp. 12/31/17
Server's signature

Andrew L. Garza Certified Texas Process Server
Printed name and title

15950 Dallas Pkwy, Ste 400
Dallas Texas 75248
(972) 242-1782
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Civil Action No. 4:16-cv-01969

Kunz-Freed et al.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Bradley E. Featherston
Featherdston Tran P.L.L.C.
20333 State Highway 249 suite 200
Houston, Texas 77070

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

United States Courts
Southern District of Texas
FILED
OCT 2 8 2016
David J. Bradley, Clerk of Court

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Bernard Lyle Matthews III

was received by me on *(date)* 10/08/2016 .

❒ I personally served the summons on the individual at *(place)* Bernard Lyle Matthews III

at 3423 Blue Cypress Dr., Spring, Tx 77388 at 8:24 pm on *(date)* 10/18/2016 ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____, a person of suitable age and discretion who resides there,

on *(date)* _____, and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____, who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 10/22/2016

Andrew L. Garza SCH 4491 Exp. 12/31/17

Server's signature

Andrew L. Garza Certified Texas Process Server

Printed name and title

15950 Dallas Pkwy, Ste 400
Dallas Texas 75248
(972) 242-1782

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Kunz-Freed et al.,

Defendant(s)

Civil Action No. 4:16-cv-01969

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Bernard Lyle Mathews III
2000 S. Dairy Ashford Rd, Suite 520
Houston, Texas 77077

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St.
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

United States Courts
Southern District of Texas
FILED
OCT 28 2016
David J. Bradley, Clerk of Court

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:16-cv-01969

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Darlene Payne-Smith
was received by me on *(date)* 10/08/2016 .

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

☑ I left the summons at the individual's residence or usual place of abode with *(name)* Frank DePaolo
31014 Becky Lane, Magnolia, Tx 77354 , a person of suitable age and discretion who resides there,
on *(date)* 10/20/2016 , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 10/22/2016

Andrew L. Garza SCH 4491 Exp. 12/31/17
Server's signature

Andrew L. Garza Certified Texas Process Server
Printed name and title

15950 Dallas Pkwy, Ste 400
Dallas Texas 75248
(972) 242-1782
Server's address

Additional information regarding attempted service, etc:

delivered by hand at 6:25 pm

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

ORIGINAL

Curtis et al.,

Plaintiff(s)

v.

Civil Action No. 4:16-cv-01969

Kunz-Freed et al.,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Candace Louise Curtis
218 Landana St
American Canyon, CA9503

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: AUG 17 2016

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Candace Louise Curtis, et al.

v. Case Number: 4:16−cv−01969

Candace Kunz−Freed, et al.

NOTICE OF SETTING

TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.

Before the Honorable

Alfred H Bennett

PLACE: Courtroom 8C
United States District Court
515 Rusk Avenue
Houston, Texas 77002

DATE: 12/9/2016

TIME: 10:00 AM

TYPE OF PROCEEDING: Motion Hearing
Motion to Dismiss for Failure to State a Claim − #19
Motion to Dismiss − #20
Motion to Dismiss for Failure to State a Claim − #23
Motion to Dismiss for Failure to State a Claim − #25
Motion for Miscellaneous Relief − #28
Motion to Dismiss for Failure to State a Claim − #30
Motion to Dismiss for Failure to State a Claim − #35
Motion to Dismiss for Failure to State a Claim − #36
Motion to Dismiss − #39
Motion to Dismiss − #40

Date: October 28, 2016

David J. Bradley, Clerk

17-20360.2867

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Candace Louise Curtis, et al.

v. Case Number: 4:16−cv−01969

Candace Kunz−Freed, et al.

NOTICE OF SETTING

TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.

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Motion to Dismiss for Failure to State a Claim − #35
Motion to Dismiss − #39
Motion to Dismiss − #40
Motion to Dismiss for Failure to State a Claim − #53

Date: October 28, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, RIK WAYNE MUNSON	§	
Plaintiffs,	§	**C.A. No. 4:16-cv-01969**
VS.	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTSS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA BRUNSTING AND AMY BRUNSTING	§	

DEFENDANT JASON OSTROM'S
MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

Defendant Jason Ostrom ("Mr. Ostrom") files this Rule 12 Motion to Dismiss and shows the following:

I.
INTRODUCTION

Plaintiffs' pro se Complaint (*D.E. #1*) purports to assert almost fifty "claims" against more than fifteen defendants, who are lawyers, judges, and other legal professionals who practice in Harris County Probate Court Number 4. Plaintiffs in this case are Candace Curtis, a disgruntled sibling in a probate case and Rik Munson, her alleged "domestic partner" and paralegal who claims to have assisted Curtis in her ongoing litigation against her siblings.

The allegations related to Mr. Ostrom are minimal. The information identifying Mr. Ostrom as a defendant is contained in paragraphs 1, 15, 55, 56 and 59 of the Complaint. (*D.E.# 1*). Paragraph 55 of the Complaint alleges that Mr. Ostrom is an attorney who has practiced in Harris County Probate Courts. Paragraph 56 alleges, without any facts to support it, that Mr. Ostrom and the other named defendants have engaged in a criminal enterprise somehow being conducted through Harris County Probate Court Number 4. Paragraph 59 makes a similar allegation, again without any factual support. A majority of the events Plaintiffs' complain about, occurred after Mr. Ostrom was discharged by Plaintiff. The Complaint asserts no factual content sufficient to maintain any cause of action against Mr. Ostrom. (*D.E.#1*).

In response to Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(6) filed by some Defendants, Plaintiffs filed their Addendum of Memorandum in Support of RICO Complaint. (*D.E. #26*). Rather than provide any specifics about how a frivolous 59-page complaint states a RICO claim against Mr. Ostrom, Plaintiffs have instead come forward with a 25-page Addendum that still does not state a claim. (*D.E.# 26*). Although the Addendum is replete with inaccuracies, it has not changed or added any additional factual allegations to support RICO claims. All the Addendum does is describe a handful of events and then conclude without explanation that the events constitute a RICO predicate act. Because the Addendum does nothing to cure the problems found in Plaintiffs' Original Complaint, the Court should grant this Motion and dismiss all claims against Mr. Ostrom.

II.
STANDARDS OF REVIEW FOR PLEADING CONSTRUCTION

In a Rule 12(b)(6) motion, the Court accepts all factual allegations in the pleadings as true and examines whether the allegations state a claim sufficient to avoid dismissal.[1] This standard of construction presupposes well-pleaded facts; a court does not accept conclusory allegations, unwarranted factual inferences, or legal conclusions as true.[2] It is appropriate to consider the exhibits attached to a complaint for purposes of a Rule 12(b)(6) motion.[3] A Court should grant a Rule 12(b)(6) motion when it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations.[4] Similarly, when a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate.[5]

III.
STATEMENT OF FACTS DERIVED EXCLUSIVELY FROM PLAINTIFFS' ORIGINAL COMPLAINT AND ADDENDUM

It is evident from the Original Complaint that Plaintiffs have underlying litigation in Probate Court Number Four with various attorneys and opposing parties. It is also evident from the Original Complaint that Plaintiffs are dissatisfied with the status of those proceedings. Beyond this, it has been extremely cumbersome to locate any specific allegations against Mr. Ostrom. In an effort to provide some clarity for the Court regarding the claims against Mr. Ostrom, Mr. Ostrom opens with a statement of facts derived exclusively from the Original Complaint and Addendum.

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1 *Guilbeaux v. Grand Casinos, Inc.*, 114 F.3d 1181 (5th Cir. 1997); *Kansa Reins Co. v. Congressional Mortgage Corp.*, 20 F.3d 1362, 1366 (5th Cir. 1994).
2 *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007).
3 *U.S. ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370 (5th Cir. 2004).
4 *Century Sur. Co. v. Blevins*, 799 F.3d 366, 371 (5th Cir. 2015).
5 *Jackson v. City of Beaumont Police Dept.*, 958 F.2d 616, 619 (5th Cir. 1992).

A. FACTS INVOLVING MR. OSTROM.

Following the hearing on October 2, 2013, Plaintiff Curtis hired Mr. Ostrom on November 27, 2013.[6] Mr. Ostrom then assisted in remanding the case back to Harris County Probate Number 4.[7] Plaintiffs state in their Addendum that the matter was remanded to Harris County Probate Court Number 4 pursuant to a stipulation that in turn for the remand, Defendants agreed the federal injunction issued by this Court would remain in full force and effect.[8] Plaintiffs then argue that once they were back in state court, Defendants immediately ignored the injunction.[9] However, Plaintiffs contradict their own statement by acknowledging that Probate Court Number 4 entered an Order modifying the federal injunction.[10] Obviously the federal injunction was not being ignored.

Plaintiffs complain of two actions taken by Mr. Ostrom. First, that Mr. Ostrom filed an application for distribution without Plaintiff Curtis's consent.[11] Attached to this Motion as Exhibit A is a letter from Mr. Ostrom to Plaintiff Curtis wherein he discusses the fact that she was aware of the application for distribution and indeed agreed to another application for distribution being filed.[12]

Secondly, Plaintiffs complain that Mr. Ostrom filed an amended complaint in the probate court raising questions as to the competency of a very lucid Nelva Brunsting.[13] Attached to this motion as Exhibit B is a copy of the Plaintiff's Second Amended Petition that Plaintiffs are referring to.[14] Nowhere within the Second Amended Petition does Mr. Ostrom raise the issue of

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6 Plaintiffs' Addendum at paragraph 32.
7 Plaintiffs' Addendum at paragraph 33.
8 Plaintiffs' Addendum paragraph 3.
9 Plaintiffs' Addendum paragraph 4.
10 Plaintiffs' Addendum paragraph 42.
11 Plaintiffs' Addendum paragraph 50.
12 Exhibit A.
13 Plaintiffs' Addendum paragraph 55.
14 Exhibit B.

Nelva's capacity.[15] Mr. Ostrom was then discharged as Plaintiff Curtis's attorney on or about March 28, 2015.

IV.
THE COURT SHOULD DISMISS THE PLAINTIFFS' CLAIMS AGAINST MR. OSTROM.

A. PLAINTIFFS HAVE NOT ADEQUATELY PLEADED THE NECESSARY PREDICATE ACTS.

Based on virtually no specific allegations of a criminal enterprise beyond dissatisfaction with the public proceedings in the underlying case, the Plaintiffs have asserted two RICO claims against Mr. Ostrom. Plaintiffs have brought their RICO action under 18 U.S.C. §1962(c) AND 18 U.S.C. §1962(d).

To avoid dismissal for failure to state a claim, a plaintiff must articulate how each defendant engaged in a prohibited pattern of racketeering activity or "predicate acts." [16] The only facts cited by Plaintiffs regarding Mr. Ostrom are found in the Addendum paragraphs 50, 51, and 55. To successfully plead a RICO claim under §1962(c), Plaintiffs must plead specific facts, that if true, would establish that each predicate act was in fact committed by Mr. Ostrom.[17] Plaintiffs fail to meet this standard.

With respect to Mr. Ostrom, Plaintiffs have listed four federal crimes that appear in 18 U.S.C § 196l(l)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simple list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead specific facts that, if true, would establish that each predicate act was in fact committed by Mr. Ostrom. [18] Plaintiffs' Complaint fails to meet this standard. For most of the identified predicated acts,

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15 *Id.*
16 *Cadle Co. v. Schultz*, 779 F. Supp. 392, 396 (N.D. Tex. 1991)
17 *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989).
18 *Id. at 880.*

Plaintiffs simply identify the statute, provide a general description of the conduct it prohibits, and then asserts that Mr. Ostrom violated the statute. However, these allegations are baseless on thier face and a far cry from the truth. Accordingly, Plaintiffs' claims must be dismissed.

B. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(c).

As to the claims under § 1962(c), the Plaintiffs did not allege with the requisite factual specificity (or beyond merely conclusory statements) any predicate acts committed by Mr. Ostrom. Similarly, the Plaintiffs did not allege and the law would not sustain any assertion that Mr. Ostrom conducted, controlled, or participated in an enterprise under the standard set forth by the Supreme Court in *Reves.*[19]

1. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).

Most of Plaintiffs' predicate acts are, at their core, allegations of fraudulent behavior. Because all of Plaintiffs' allegations are fundamentally grounded in fraud, "rule 9(b) applies and the predicate acts alleged must be plead with particularity."[20]

Underpinning the heightened pleading requirement for fraud claims is the federal courts' determination that "defendants are not required to guess what statements were made in connection with a plaintiffs claim and how and why they are fraudulent."[21] Thus, Plaintiffs' fraud allegations must specifically refer to the "time, place, and contents of the false representations, as well as the identity of the person making the representation and what the person obtained thereby."[22] When

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[19] 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).

[20] *Walsh v. America's Tele- Network Corp.,* 195 F. Supp. 2d 840, 846 (E.D. Tex. 2002) (citing *Williams v. WMXTechs., Inc.,* 112 F.3d 175, 177 (5th Cir. 1997)); FED. R. C1v. P. 9(b) ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.").

[21] *Allstate Insurance Company v. Benhamou,* No. 4:15-CV-00367, 2016 WL 3126423, at *17 (S.D. Tex. June 2, 2016).

[22] *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.,* 975 F.2d 1134, 1138 (5th Cir. 1992); *Skidmore Energy, Inc. v. KPMG LLP,* No. CIV.A.3:03CV2138-B, 2004 WL 3019097, at *3 (N.D. Tex. Dec. 28, 2004).

pleading a claim for mail or wire fraud, Plaintiffs must specify the content of the alleged communications and how those communications advanced the alleged scheme to defraud the Plaintiffs.[23]

Here, Plaintiffs have failed to allege the contents of any of the purported false representations made by Mr. Ostrom, or how they advanced the alleged scheme to defraud Plaintiffs, flaws that are fatal to their claims. Moreover, as stated above, Plaintiffs offer no real factual support for their obstruction of justice, mail and wire-fraud allegations, or truly any of their claims. Given these fatal defects, the Court should dismiss Plaintiffs' RICO action.

2. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

RICO cases based upon fraud require a showing of detrimental reliance by the plaintiff.[24] This requirement, the Fifth Circuit has determined, is consistent with the Supreme Court's admonition in *Holmes* that federal courts employ traditional notions of proximate cause when assessing the nexus between a plaintiffs' injuries and the underlying RICO violation.[25] But, despite this firmly established requirement, Plaintiffs in this case have asserted no allegations-indeed, not even a conclusory allegation-detailing how they purportedly relied upon Mr. Ostrom's allegedly fraudulent conduct. Accordingly, Plaintiffs' RICO claims, most of which are fraud-based, should be dismissed.

C. PLAINTIFFS HAVE FAILED TO PLEAD A COGNIZABLE RICO ENTERPRISE

1. Plaintiffs Enterprise Allegations Are Too Vague and Conclusory

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[23] *Elliott,* 867 F.2d at 882; *Old Time Enterprises,* 862 F.2d at 1218; *Tel-Phonic Servs.,* 975 F.2d at 1138.
[24] *Summit Properties, Inc. v. Hoechst Celanese Corp.,* 214 F.3d 556, 562 (5th Cir. 2000) (dismissing RICO claims where plaintiff failed to allege reliance in connection with fraud-based predicate acts)
[25] *See Holmes v. Securities Investor Protection Corp.,* 503 U.S. 258, 279 (1992); *Sandwich Chef of Texas, Inc. v. Reliance Nat'l Indemnity Ins. Co.,* 319 F.3d 205,219 (5th Cir. 2003); *In re MasterCard International, Inc.,* 313 F.2d 257, 263 (5th Cir. 2002) (noting that district court's reliance analysis was "particularly compelling").

An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[26] The Fifth Circuit requires that "[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise."[27] To establish an "association in fact" enterprise under 18 U.S.C. § 1961(4) a plaintiff must show "'evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit.'"[28]

The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."[29] The Fifth Circuit has enumerated the requirements of an enterprise as requiring that it "(l) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure."[30]

"[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity."[31] However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO."[32]

Plaintiffs have provided virtually no facts concerning the alleged enterprise, how it

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[26] 18 U.S.C. § 1961(4); *see also Elliott*, 867 F.2d at 881.
[27] *Elliott*, 867 F.2d at 881.
[28] *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *U.S. v. Turkette*, 452 U.S. 576, 583 (1981)).
[29] 452 U.S. at 583.
[30] *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir.1990).
[31] *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987).
[32] *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 2d at 427).

operated, how decisions were made, what conduct beyond the alleged predicate acts they purportedly engaged in, how the operations of the individuals were carried out, or how they went about accomplishing their purported goals. Instead, Plaintiffs allege the text book elements of an enterprise characterized with inflammatory exaggerations and baseless conclusions.

Plaintiffs fail to allege any specific facts that would demonstrate a conspiracy of any kind- when it began, who was actually a part of such conspiracy or any facts suggesting that any defendant had actual knowledge that any of the seemingly harmless acts were done in furtherance of some secret conspiracy. In the absence of these, or any other supporting facts, Plaintiffs' pleadings are simply insufficient.

Given RICO's "draconian" penalties and the fact that the very pendency of a RICO suit can be stigmatizing and costly, Plaintiffs should be required to satisfy their pleading obligations.[33] Hence, to avert dismissal under Rule 12(b)(6), a civil RICO complaint must, at a bare minimum, state facts sufficient to portray (i) specific instances of racketeering activity within the reach of the RICO statute; and (ii) a causal nexus between that activity and the harm alleged."[34] Plaintiffs have failed to meet even this "bare minimum" requirement. Therefore, this case should be dismissed.

2. Plaintiffs alleged enterprise lacks continuity.

Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements.[35] Specifically, "[a]n

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[33] *See Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997) (characterizing RICO's penalties as "draconian"); *Miranda v. Ponce Federal Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (characterizing RICO cases as "stigmatizing" and "costly").

[34] *Miranda*, 948 F.2d at 44-45 (emphasis added) (affirming dismissal of RICO claims where the pleadings "though copious, [were] vague and inexplicit").

[35] *See, e.g., Delta Truck*, 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962.").

association-in fact enterprise (1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit as shown by a hierarchical or consensual decision making structure."[36] These requirements limit the application of the RICO Act, and serve to prevent an overly-broad application to general commercial conduct that was never really the intended focus of the Act.[37]

Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

D. Plaintiffs Have Failed to Adequately Plead a Pattern of Racketeering Activity.

Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts.[38] To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other and that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity."[39] When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though

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[36] *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995).
[37] *Delta Truck,* 855 F.2d at 242-43.
[38] *See In re Burzynski* 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck,* 855 F.2d at 242-43).
[39] *HJ., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity."[40] Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."[41]

Here, Plaintiffs alleges several times throughout their Complaint that Mr. Ostrom engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary pattern of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

E. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(d).

To prove a RICO conspiracy, the Plaintiffs must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.[42] A RICO conspiracy thus has RICO-specific requirements—an agreement by at least two conspirators to engage in a pattern of racketeering.[43] Mere association with the enterprise is not actionable; agreement is essential.[44] Further, if a plaintiff fails to properly plead a RICO claim under §§ 1962(a), (b), or (c), it correspondingly fails to properly plead a conspiracy claim under § 1962(d).[45]

The Court should dismiss the § 1962(d) claim because the Plaintiffs failed to state a claim under §§ 1962(a-c). As a result, the conspiracy claims fail under controlling Fifth Circuit authority.[46] The Court should additionally dismiss the claim because the Plaintiffs have not

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40 *In re Burzynski*, 989 F.2d at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity).

41 *Id.* (quoting *HJ., Inc.*, 492 U.S. at241).

42 *TruGreen Landcare, L.L.C. v. Scott*, 512 F.Supp.2d 613, 625 n.11 (N.D. Tex. 2007) (Fitzwater, J.) (quoting *United States v. Delgado*, 401 F.3d 290, 296 (5th Cir. 2005)).

43 *Id.*

44 *Baumer*, 8 F.3d at 1344.

45 *N. Cypress Med. Ctr. Operating Co*, 781 F.3d at 203.

46 *Id.*

alleged any specific facts detailing an agreement to commit a RICO offense, what the agreement was, how it was reached, and when it was entered.[47] These types of missing details are necessary to state a claim under § 1962(d). As explained in *Twombly,* allegations that a defendant acted in ways consistent with a conspiratorial agreement, but also equally well explained by legitimate economic incentives, do not suffice to show illegality.[48] So too, unsupported conclusory allegations are not entitled to be assumed true, and dismissal is proper when a conspiracy allegation does not plausibly suggest an illicit accord because the conduct could be compatible with or explained by, lawful, unchoreographed free-market behavior."[49] Because the Plaintiffs have failed to state a claim upon which relief may be granted, the Court should grant this Motion to Dismiss.

1. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

To recover damages under the RICO Act, Plaintiffs must prove that they suffered an injury to their "business or property by reason of a statutory violation. 18 U.S.C. § 1964(c). The "by reason of" language of RICO has been interpreted by the Supreme Court and to require a showing that the violation was the "but for" cause and "proximate" cause of the injury.[50] That is, a plaintiff must allege facts which show that, "but for" defendant's conduct, the plaintiff would not have suffered the injuries claimed.[51] A plaintiff must also allege facts which show that its alleged injuries were a foreseeable consequence of the defendant's conduct.[52]

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[47] *Lewis v. Sprock*, 612 F.Supp. 1316, 1325 (N.D. Cal. 1985); *Lui Ciro, Inc. v. Ciro, Inc.*, 895 F.Supp. 1365 (D. Hawaii 1995).
[48] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).
[49] *Ashcroft v. Iqbal*, 556 U.S. 662, 680, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009).
[50] *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 559 (E.D. Tex. 2004)(citing Holmes, 503 U.S. at 279).
[51] Ocean Energy II. V. Alexander & *Alexander, Inc.*, 868 F.2d 740, 744 (5th Cir. 1989).
[52] *Navigant Consulting, Inc. v. Wilkinson*, 508 F.3d 277,289 (5th Cir. 2007).

More plainly stated, a RICO plaintiff "only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the [RICO] violation."[53]

Thus, to avoid a Rule 12(b)(6) dismissal, Plaintiffs must allege the existence of a "direct relation between the injury asserted and the injurious conduct alleged."[54] These allegations must include specific facts; conclusory and generalized allegations are insufficient.[55] "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiffs' injuries."[56]

The United States Supreme Court emphasized RICO's proximate-cause requirement in *Anza v. Ideal Steel Supply Corp*. In explaining its conclusion, the Supreme Court identified circumstances that emphasized the lack of the necessary causal connection. One such circumstance was the difficulty the trial court would have accurately ascertaining damages. The "less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiffs' damages attributable to the violation, as distinct from other independent factors."[57] If the case were allowed to go forward, the court reasoned, the trial court would be faced with the difficult task of accurately ascertaining the plaintiff's damages. [58]

Clearly, the allegations in the Complaint are insufficient to properly plead a violation of the RICO Act because they are vague, conclusory and generalized. Nevertheless, just like in *Anza*, Plaintiffs have alleged a similar disjunctive causation pattern with respect to their claims against Mr. Ostrom. There is not a direct relation between the injury asserted and the injurious conduct alleged as anticipated by *Anza*. At a minimum, the necessary causal link is missing. Because

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[53] *Sedima*, 473 U.S. at 496.
[54] *See, e.g., Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 452 (2006), 1996 (2006); *Old Time Enterprises*, 862 F.2d at 1219.
[55] *Fernandez-Montez v. Allied Pilots Ass'n*, 987 F.2d 278,284 (5th Cir. 1993).
[56] *Anza*, 547 U.S. at 452.
[57] *Id.*
[58] *Id*

Plaintiffs have failed to allege facts necessary to meet the Supreme Court's high proximate-causation standard, this case should be dismissed.

V.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Mr. Ostrom respectfully prays that this Court GRANT this Motion to Dismiss, dismiss all of the Plaintiffs' claims against Mr. Ostrom with prejudice, and award Mr. Ostrom all such other relief to which he may be justly entitled.

Respectfully submitted,

ostrommorris, PLLC

BY:

R. KEITH MORRIS, III
(TBA #24032879)
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ATTORNEYS FOR JASON O. OSTROM

CERTIFICATE OF SERVICE

I hereby certify that on Monday, October 31, 2016, a true and correct copy of the foregoing instrument was served on all known counsel of record through the Court's CM/ECF system, which constitutes service on all parties in accordance with the Federal Rules of Civil Procedure.

STACY L. KELLY

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January 13, 2015

Ms. Candace Curtis

Via Email; occurtis@sbcglobal.net

Re: Cause No. 412,249; *In Re: Estate of Nelva E. Brunsting, Deceased*; in the Probate Court Number Four (4) of Harris County, Texas

Dear Ms. Curtis:

As you know, we asked the Court to order a distribution of funds out of the Brunsting Family Trust in order to pay the outstanding balance on your account with us. Unfortunately, Anita opposed our application and the Court denied it. The Judge did say, however, that she would entertain an Application for Partial Distribution of your share of the Trust. We could file that on your behalf with your authorization and your agreement that you would direct the distribution to us for payment on your account. The Application would not mention our fees, and there is no guarantee that the Court would grant this Application either – in spite of the fact that she recommended it during the hearing. However, it is currently the best option that I know of to address your outstanding account balance, which needs to be reduced in order for us to continue preparing for trial – a trial that seems necessary in light of the positions that your sisters took in mediation.

If you want to discuss this approach I am happy to have a telephone conference with you; please contact Mica DeScioli to set that up. Otherwise, if you would like for us just to proceed with asking the Court for this relief and not waste time discussing it further, simply sign this letter and return it to us, and we will get the Application prepared and filed.

Sincerely,

Jason B. Ostrom

AGREED:

Candace Curtis

EXHIBIT
A
17-20360.2884

CAUSE NO. 412,249

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Second Amended Petition and for cause of action would show as follows:

I. PARTIES

Plaintiff, Candace Louis Curtis is a citizen of the State of California.

Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant is Carole Ann Brunsting, is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

Necessary Party is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

II. JURISDICTION AND VENUE

This Court had jurisdiction pursuant to Sections 32.002(c) and 32.005 of the Texas Estates Code, Chapter 37 of the Texas Civil Practice and Remedies Code, and Chapter 115 of the Texas Property Code. Venue is proper pursuant to Section 33.002.

III. BACKGROUND

Elmer and Nelva Brunsting created the Brunsting Family Trust, and placed essentially all of their assets into this Trust, of which they were the trustees. The Trust became irrevocable and not subject to amendment upon Elmer's death in 2009, at which time Nelva became the sole trustee of the two trusts into which the Family Trust was divided: the Decedent's Trust and the Survivor's Trust. She also became the sole beneficiary of the Survivor's Trust and the primary beneficiary of the Decedent's Trust.

In 2010, Defendants Anita and Amy began taking steps to control the Trust assets and garner a larger share than their siblings. To that end, they caused Nelva to execute a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment in June of 2010 in which she exercised her power of appointment over all the property held in the Nelva E. Brunsting Survivor's Trust as well as in the Elmer H. Brunsting Decedent's Trust. The June exercise of Power of Appointment went on to ratify and confirm all the other provisions of the Trust. Two months later, they caused Nelva to execute a second Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment, in which she attempted to exercise the very same power of appointment she had exercised in June without revoking the prior exercise – instead she ratified and confirmed the June 2010 Power of Appointment. This second Qualified Beneficiary Designation purports to remove Candy and Carl as the trustees of their own trusts, while not subjecting Amy and Anita to that same fate, and contains paragraphs of self-serving no-contest provisions.

Seemingly because the future power she had obtained for herself was insufficient, Anita had Nelva resign as Trustee in December of 2010, in Anita's favor. As Trustee, Anita made numerous transfers that far exceeded the scope of her powers. She conveyed to Carole 1,325 shares of Exxon stock out of the Decedent's Trust, and gave 1,120 shares of Exxon to Amy out of the Survivor's

Trust, plus 270 shares of Chevron stock (held in the names of Amy's children). To herself she transferred 160 shares of Exxon, plus 405 shares of Chevron (270 shares she placed in the name of her children). Anita also paid herself thousands of dollars in the form of gifts, fees and reimbursements, and did the same for both Amy and Carole.

Carole not only received hundreds of thousands dollars worth of stock and cash distributions, she also had access to a bank account that Anita funded with Trust monies and used that bank account for her own purposes. She routinely charged this Trust account for her personal groceries, gasoline, and other expenses despite not being a present income beneficiary of the Trust.

IV. CAUSES OF ACTION

Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Defendants Anita breached this duty during Nelva's life by engaging in self-dealing and taking actions not permitted by the terms of the Trust, and thus is liable to the Estate and derivatively to Plaintiff for these breaches. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest and costs of court.

Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and

her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

Money Had and Received. Defendants Anita, Amy and Carole have taken money that belongs in equity and good conscience to the Trust and derivatively to Plaintiff, and have done so with malice and through fraud, in part by representing that transfers to them were valid reimbursements. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

Conversion. Defendants Anita, Amy and Carole have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court

costs, both individually and on behalf of the Decedent's Estate.

Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants Amy, Anita, and Carole, herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed both the June and August Qualified Beneficiary Designations and Exercises of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. The Modification Documents fail because they attempted to change the terms of the Trust. Assuming without admitting that the June Modification Document is a valid Power of Appointment, then the August Modification Document fails because Nelva had already effectively appointed all of the Trust property in June; she never revoked that Power of Appointment, but actually affirmed it. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

Declaratory Judgment Action. The Family Trust Agreement governed all of the rights and

powers that Anita held as Trustee. Those rights and powers did not allow her to transfer out the shares of Exxon and Chevron stock. Her duties as a Trustee prevented her from distributing Trust Assets to some beneficiaries to the detriment and for the purpose of harming other beneficiaries. Plaintiff seeks a declaration that the distributions of Chevron Stock and Exxon Stock to Amy, Anita and Carole are void because Anita as Trustee exceeded the scope of her power in making those gifts.

Unjust Enrichment. Defendants Amy, Anita and Carole have all been unjustly enriched by their receipt of Chevron Stock, Exxon Stock, and cash from the Trust. None were entitled to the distributions of stock, and a majority of the cash transfers were for purposes not authorized under the scope of the Trust Agreement nor of the purposes they alleged to be for. Plaintiff seeks a declaration that the Defendants were unjustly enriched, and seeks the imposition of a constructive trust on the remaining Chevron Stock and Exxon Stock that remains in their possession, as well as on any cash or proceeds from the sale of said stock and on any cash distributions from the Trust.

Conspiracy. Upon information and belief, Defendants Anita, Amy and Carole all conspired to make improper withdrawals and distributions from the Trust, to decrease Plaintiff's inheritance and interest in the Trust, to enrich themselves at the expense of the Trust and other beneficiaries, and to conceal the impropriety of their actions. They should be found jointly and severally liable for the decrease in the Trust, and should be required to disgorge their ill-gotten gains.

Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance with the Texas Property Code.

V. JURY DEMAND

Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to her and to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

ostrommorris, PLLC

BY: _____

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 11th day of February, 2015:

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Mr. Bradley Featherston
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281.759.3213
281.759.3214 (Facsimile)

Mr. Neal Spielman
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Jason B. Ostrom/
R. Keith Morris, III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, RIK WAYNE MUNSON	§	
	§	
Plaintiffs,	§	**C.A. No. 4:16-cv-01969**
	§	
VS.	§	
	§	
CANDACE KUNZ-FREED, ALBERT VACEK, JR., BERNARD LYLE MATHEWS III, NEAL SPIELMAN, BRADLEY FEATHERSTON, STEPHEN MENDEL, DARLENE PAYNE SMITH, JASON OSTROM, GREGORY LESTER JILL WILLARD YOUNG, CHRISTINE RIDDLE BUTSS, CLARINDA COMSTOCK, TONI BIAMONTE, BOBBY BAYLESS, ANITA BRUNSTING AND AMY BRUNSTING	§	

ORDER

Pending before the Court is Jason Ostrom's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(6). After having considered the Motion, the Court hereby **GRANTS** Defendant's Motion to Dismiss Complaint. It is therefore,

ORDERED that all claims asserted against Jason Ostrom are dismissed.

It is so **ORDERED.**

Date

The Honorable Alfred H. Bennett
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL*.	§	
	§	
	§	

DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE'S RESPONSE TO PLAINTIFFS' MOTION FOR CONSOLIDATION

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants, the Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, "Harris County Defendants") file this Response to Plaintiffs' Motion for Consolidation [Doc. 61] and would respectfully show the Court as follows:

Background

On February 22, 2012, Plaintiff Curtis sued her siblings Anita and Amy Brunsting, claiming they breached fiduciary duties owed to her arising from their position as co-trustees of the Brunsting Family Trust ("Sibling Lawsuit").[1] Upon motion by Curtis, the

[1] See Curtis' Original Petition [Doc. 1] filed in Case No. 4:12-cv-0592, *Candace Louise Curtis v. Anita Kay Brunsting, et al*. Harris County Defendants ask the Court to take judicial notice of this lawsuit and its pleadings.

Sibling Lawsuit was remanded to Harris County Probate Court 4.[2] The remand occurred on May 15, 2014. Curtis subsequently sought permission to e-file and was denied.[3]

Two years later, on July 5, 2016, Plaintiffs Curtis and paralegal Rik Munson filed this lawsuit, claiming the Harris County Defendants and lawyers representing various parties (including Curtis' former lawyer Jason Ostrom) were involved in some fictitious civil and criminal RICO conspiracy.

Plaintiffs now seek to consolidate the instant lawsuit with the Sibling Lawsuit -- however, not to consolidate it with the actual case that is pending in Probate Court 4, but to consolidate it in a federal court that has remanded and closed the case.

Argument & Authorities

The Motion for Consolidation should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact. Further, the case to which they seek consolidation is currently pending before Probate Court 4 – with the judges being sued in this case.

1. Consolidation should be denied because the "prior case" is closed.

A motion to consolidate a pending matter into a closed matter should be denied. *See* Order Denying Motion for Leave to File Motion to Consolidate, *EP-Team, Inc. v. Aspen Infrastructure, Ltd.*, No. H-07-2549 [Doc. 17] (S. D. Tex. Jan. 10, 2008). In *EP-Team*, a

[2] See Sibling Lawsuit, Doc. 112.
[3] See Sibling Lawsuit, Doc. 114, Order Denying Curtis Motion for Permission for Electronic Case Filing.

court in this District was asked to consolidate a matter into an earlier-filed case that was closed. *Id.* The court denied consolidation, stating, "This case, Civil Action No. 07-2549, is the earlier case and **it is closed, therefore, the Court cannot consolidate anything with it**." *Id.* (emphasis added); *see also Clarke v. Dir., TDCJ-CID*, No. 4:09-CV-404, 2012 WL 4120430, at *1 & *5 (E.D. Tex. Sept. 19, 2012) (denying a motion to consolidate because the "corresponding case" was "closed"); *Hamilton v. United Healthcare of Louisiana, Inc.*, CIV.A. 01-585, 2003 WL 22779081, at *2 n.3 (E.D. La. Nov. 21, 2003) (determining that "consolidation **was done in error**" because the first-filed case "was closed" prior to consolidation) (emphasis added). And the "prior matter" is closed because Plaintiff Curtis *herself* requested the court remand the matter to Probate Court 4. *See* Doc. 112 in the Sibling Lawsuit. Thus, Plaintiffs' Motion for Consolidation should be denied.

2. The Sibling Lawsuit and this lawsuit should not be consolidated.

In determining whether to consolidate, Courts consider five factors:

> (1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law and/or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately."

Zolezzi v. Celadon Trucking Services, Inc., No. Civ.A.H-08-3508, 2009 WL 736057, at *1 (S.D. Tex. Mar. 16, 2009) (citing *In re Enron Corp. Securities, Derivative & "ERISA" Litigation*, Civ. A. Nos. H–01–3624, H–04–0088, H–04–0087, H–03–5528, 2007 WL

446051, at *1 (S.D. Tex. Feb.7, 2007)). Here, those factors overwhelmingly show that the two cases should not be consolidated.

First, the actions are not **pending** before the same court. Indeed, as shown above, the "prior case" is not pending at all — it is closed.

Second, although some of the parties to the two matters are common between the two cases, several are not. None of the Harris County Defendants were parties to the Sibling Lawsuit. With the exception of Amy and Anita Brunsting, none of the 11 other Defendants were parties to the Sibling Lawsuit either (Jill Young, Gregory Lester, Candace Kunz-Freed, Albert Vacek, Jr., Bernard Lyle Matthews, III, Neil Spielman, Bradley Featherston, Stephen Mendel, Darlene Payne Smith, Bobbie Bayless and her attorney in the Sibling Lawsuit, Jason Ostrom).

Third, there are not common questions of law or fact. This matter involves RICO assertions made by Plaintiffs, who make the novel contention that the Judges, Court Reporter and attorneys that practice in Probate Court 4, known as the "Harris County Tomb Raiders" and the "Probate Mafia," are involved in an alleged conspiracy to "transfer wealth" from estates by engaging in "poser advocacy." There are *no* questions of law or fact in the closed matter, because it has been remanded to state court. But even if the Court looked to the questions of law and fact in the state court matter, those questions relate merely to estate law—not alleged federal RICO statutes and criminal conspiracies.

Fourth, there is an extraordinary risk of confusion that would result from consolidation of the cases. As examples, in the RICO case, many of the probate court litigants, the attorneys, and the judges are all Defendants, who are all more-or-less aligned in opposing Plaintiffs' RICO allegations. But in the probate matter itself, many of the parties share no such affinities. Certainly, it would be confusing for a fact-finder to be asked to determine, on the one hand, whether Plaintiff Curtis's own counsel was involved in the criminal enterprise "Probate Mafia," when that counsel also previously represented the Plaintiff in the closed federal court matter.

Fifth, consolidation will not conserve judicial resources since the prior matter is closed.

Conclusion & Prayer

The Motion for Consolidation should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact. For the reasons set forth above, the Harris County Defendants respectfully request the Court deny the Plaintiffs' Motion for Consolidation [Doc. 61] and award the Defendants such other and further relief to which this Court finds them to be justly entitled.

Dated: October 31, 2016.

Respectfully Submitted,

/s/ Laura Beckman Hedge
Laura Beckman Hedge
Assistant County Attorney
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Federal Bar No. 23243
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Facsimile: (713) 755-8924
ATTORNEY FOR DEFENDANTS, JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA COMSTOCK & TONY BAIAMONTE

OF COUNSEL:

VINCE RYAN,
HARRIS COUNTY ATTORNEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 31st day of October, 2016, via ECF.

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Anita Brunsting
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Victoria, Texas 77904

Amy Brunsting
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New Braunfels, Texas 78132

/s/ Laura Beckman Hedge
Laura Beckman Hedge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.*	§	
	§	
VS.	§	
	§	**Civil Action No. 4:16-cv-01969**
CANDACE KUNZ-FREED, *ET AL.*	§	
	§	
	§	

ORDER

The Court, having considered the Plaintiffs' Motion for Consolidation [Doc. 61], the Responses filed by Defendants Christine Riddle Butts, Clarinda Comstock, Tony Baiamonte and Jill Young, and the applicable law, finds the relief requested should not be granted and therefore DENIES the Motion for Consolidation.

It is so ORDERED.

_____ _____

Date

The Honorable Alfred H. Bennett
United States District Judge

United States District Court
Southern District of Texas
ENTERED
November 02, 2016
David J. Bradley, Clerk

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

CANDACE LOUISE CURTIS & RIK WAYNE MUNSON	§	
	§	
	§	
VS.	§	**CIVIL ACTION NO. 4:16-cv-01969**
	§	**(Alfred H. Bennett)**
CANDACE KUNZ-FREED, ALBERT VACEK, JR, ET AL	§	
	§	

ORDER ON MOTION TO SUBSTITUTE COUNSEL FOR STEPHEN A. MENDEL AND BRADLEY E. FEATHERSTON

After considering the Unopposed Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherston, the Court

GRANTS the Motion to Substitute, and

ORDERS the withdrawal of Stephen A. Mendel and The Mendel Law Firm, L.P. as counsel of record for Stephen A. Mendel and Bradley E. Featherston. Further, the Court

ORDERS the following counsel be substituted as attorney in charge for Stephen A. Mendel and Bradley E. Featherston:

Adraon D. Greene
Attorney-in-Charge
agreene@gallowayjohnson.com
David C. Deiss
ddeiss@gallowayjohnson.com
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH
1301 McKinney St., Suite 1400
Houston, Texas 77010

SIGNED on 10/31/16, 2016.

HON. ALFRED H. BENNETT

17-20360.2902

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

CANDACE LOUISE CURTIS, et al	§	
	§	
	§	CIVIL ACTION NO. 4:16-cv-01969
	§	
vs.	§	
	§	
CANDACE KUNZ-FREED, et al	§	
	§	
	§	

MOTION TO DISMISS

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant Bernard Lilse Mathews, III, erroneously sued and served as "Bernard Lyle Mathews, III" (hereinafter referred to as "Mathews") hereby files this Motion to Dismiss for Failure to State a Claim and for Lack of Subject Matter Jurisdiction and would respectfully show the Court the following:

I. SUMMARY OF MOTION

1. Plaintiffs do not have an actual case or controversy with Mathews. Plaintiffs cannot articulate any action traceable to Mathews, which has caused any injury under any of the theoretical approaches taken by Plaintiffs. Additionally, Mathews cannot be held liable to Plaintiffs. Accordingly, Mathews requests that this Court dismiss Plaintiffs' claim for failure to state a claim and for lack of subject matter jurisdiction.

II. BACKGROUND

2. Mathews handled only an Emergency Motion for Removal of Lis Pendens in the case

of Candace Curtis vs. Anita and Amy Brunsting; in Civil Action 4:12-cv-00592, also file in this District Court. The purpose of the motion was to seek relief from a lis pendens to permit the trustees to consummate a fair market sale of residential real property owned by the Brunsting Family Living Trust. A telephone conference with the Judge was held on the motion with Candace Curtis participating. At the conclusion of this hearing Judge Kenneth Hoyt, on his own motion, dismissed the underlying action for lack of jurisdiction.

3. Candace Curtis appealed this dismissal, but Anita and Amy Brunsting hired new counsel who handled the appeal, the subsequent remanded action, and various other matters. Mathews had no other involvement in this case, or any other legal proceedings involving any of the parties to this case. Although acting at various times as "Of Counsel" to the firm of Vacek & Freed, Mathews never had any role in designing, drafting, administering or enforcing the provisions of the Brunsting Family Trust. Mathews has had no contact with the plaintiff's outside of the above-mentioned Motion, and has had no substantive contact with any of the co-defendants who are asserted to have engaged in various conspiracies in Plaintiff's Verified Complaint for Damages. There are no factual allegations in the Complaint that would tie Mathews to any of the fanciful theories of liability. In essence, Mathews is just an unfortunate bystander caught in the net of craziness that is the *modus operandi* of Candace Curtis and her surrogate, Rik Munson.

III. BASIS FOR MOTION TO DISMISS AND STANDARD OF REVIEW

4. Rule 12(b)(6) authorizes dismissal of an action for "failure to state a claim upon which relief can be granted" if the plaintiffs complaint lacks "direct allegations on every material

point necessary to sustain a recovery" or fails to "contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." FED. R. Civ. P. 12(b)(6); Campbell v. San Antonio, 43 F.3d 973, 975 (5th Cir. 1995). Although a court is required to accept all well-pleaded facts as true, a court does not accept as true conclusory allegations, "unwarranted deductions of fact," or "legal conclusions masquerading as factual conclusions." See, e.g., Tuchman v. DSC Communications, 14 F.3d 1061, 1067 (5th Cir. 1994). A claim must be dismissed if the claimant can prove no set of facts that would entitle it to relief. Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995) "The court is not required to 'conjure up unpled allegations or construe elaborately arcane scripts to save a complaint." Id. For the reasons set forth in more detail below, Plaintiffs' claims should be dismissed because Plaintiffs have failed to state a claim upon which relief may be granted.

5. Rule 12(b)(1) permits the dismissal of an action for lack of subject matter jurisdiction when the district court lacks authority to hear the dispute. See generally, U.S. v. Morton, 467 U.S. 822 (1984). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001). To establish subject matter jurisdiction, a party must show than an actual case or controversy exists between himself and the party from whom relief is sought. Standing is an essential element in the determination of whether a true case or controversy exists. A motion to dismiss for lack of subject matter jurisdiction should be granted if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief.

Id.

IV.

ARGUMENTS AND AUTHORITIES

6. Mathews adopts the Arguments and Authorities set forth by all other Defendants in their Motions to dismiss on file herein, and adopts by reference that material as if set forth herein verbatim.

V. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant Bernard Lilse Mathews, III, hereby requests that his Motion to Dismiss for Failure to State a Claim on all claims alleged by Plaintiffs be granted.

Respectfully submitted,

/s/

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Certficate of Service

I certify that on the 6th day of November, 2016, a true and correct copy of the foregoing was served via the Court's ECF system on the Plaintiffs and all other parties of record.

/s/

Bernard Lilse Mathews, III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Candace Louise Curtis, et al.

v. Case Number: 4:16−cv−01969

Candace Kunz−Freed, et al.

NOTICE OF SETTING

TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.

Before the Honorable

Alfred H Bennett

PLACE: Courtroom 8C
United States District Court
515 Rusk Avenue
Houston, Texas 77002

DATE: 12/15/2016

TIME: 11:00 AM

TYPE OF PROCEEDING: Motion Hearing

Date: November 4, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
RIK WAYNE MUNSON	§	
Plaintiffs,	§	
	§	
Vs.	§	**C.A. No. 4:16-cv-01969**
	§	
CANDACE KUNZ-FREED, ALBERT	§	
VACEK, JR., BERNARD LYLE	§	
MATHEWS III, NEAL SPIELMAN,	§	
BRADLEY FEATHERSTON, STEPHEN	§	
MENDEL, DARLENE PAYNE SMITH	§	
JASON LESTER, GREGORY LESTER	§	
JILL WILLARD YOUNG, CHRISTINE	§	
RIDDLE BUTSS, CLARINDA	§	
COMSTOCK, TONI BIAMONTE,	§	
BOBBY BAYLESS, ANITA	§	
BRUNSTING AND AMY BRUNSTING	§	

DEFENDANT GREGORY LESTER'S
MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

Defendant Gregory Lester ("Mr. Lester") files this Rule 12 Motion to Dismiss and shows the following:

I.
INTRODUCTION

Plaintiffs' pro se Complaint (*D.E. #1*) purports to assert almost fifty "claims" against more than fifteen defendants, who are lawyers, judges, and other legal professionals who practice in Harris County Probate Court Number 4. Plaintiffs in this case are Candace Curtis, a disgruntled sibling in a probate case and Rik Munson, her alleged "domestic partner" and paralegal who claims to have assisted Curtis in her ongoing litigation against her siblings.

The allegations related to Mr. Lester are minimal. The information identifying Mr. Lester as a defendant is contained in paragraphs 1, 16, 55, 56 and 59 of the Complaint. (*D.E.# 1*).

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Paragraph 55 of the Complaint alleges that Mr. Lester is an attorney who has practiced in Harris County Probate Courts. Paragraph 56 alleges, without any facts to support it, that Mr. Lester and the other named defendants have engaged in a criminal enterprise somehow being conducted through Harris County Probate Court Number 4. Paragraph 59 makes a similar allegation, again without any factual support. The Complaint asserts no factual content sufficient to maintain any cause of action against Mr. Lester. (*D.E.#1*).

In response to Motions to Dismiss under Federal Rule of Civil Procedure 12(b)(6) filed by some Defendants, Plaintiffs filed their Addendum of Memorandum in Support of RICO Complaint. (*D.E. #26*). Rather than provide any specifics about how a frivolous 59-page complaint states a RICO claim against Mr. Lester, Plaintiffs have instead come forward with a 25-page Addendum that still does not state a claim. (*D.E.# 26*). Although the Addendum is replete with inaccuracies, it has not changed or added any additional factual allegations to support RICO claims. All the Addendum does is describe a handful of events and then conclude without explanation that the events constitute a RICO predicate act. Because the Addendum does nothing to cure the problems found in Plaintiffs' Original Complaint, the Court should grant this Motion and dismiss all claims against Mr. Lester.

II.
STANDARDS OF REVIEW FOR PLEADING CONSTRUCTION

In a Rule 12(b)(6) motion, the Court accepts all factual allegations in the pleadings as true and examines whether the allegations state a claim sufficient to avoid dismissal.[1] This standard of construction presupposes well-pleaded facts; a court does not accept conclusory allegations,

[1] *Guilbeaux v. Grand Casinos, Inc.*, 114 F.3d 1181 (5th Cir. 1997); *Kansa Reins Co. v. Congressional Mortgage Corp.*, 20 F.3d 1362, 1366 (5th Cir. 1994).

unwarranted factual inferences, or legal conclusions as true.[2] It is appropriate to consider the exhibits attached to a complaint for purposes of a Rule 12(b)(6) motion.[3] A Court should grant a Rule 12(b)(6) motion when it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations.[4] Similarly, when a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate.[5]

III.
STATEMENT OF FACTS DERIVED EXCLUSIVELY FROM PLAINTIFFS' ORIGINAL COMPLAINT AND ADDENDUM

It is evident from the Original Complaint that Plaintiffs have underlying litigation in Probate Court Number Four with various attorneys and opposing parties. It is also evident from the Original Complaint that Plaintiffs are dissatisfied with the status of those proceedings. Beyond this, it has been extremely cumbersome to locate any specific allegations against Mr. Lester. In an effort to provide some clarity for the Court regarding the claims against Mr. Lester, Mr. Lester opens with a statement of facts.

A. FACTS INVOLVING MR. LESTER.

On July 23, 2015, the Honorable Christine Butts, Judge of Harris County Probate Court Number Four (4), entered its Order Appointing Temporary Administrator Pending Contest Pursuant to Texas Estates Code 452.051.[6] That Order appointed Gregory Lester as Temporary Administrator with limited powers.7 The only powers conferred on Mr. Lester were the powers

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2 *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir. 2007).
3 *U.S. ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370 (5th Cir. 2004).
4 *Century Sur. Co. v. Blevins*, 799 F.3d 366, 371 (5th Cir. 2015).
5 *Jackson v. City of Beaumont Police Dept.*, 958 F.2d 616, 619 (5th Cir. 1992).
6 Exhibit A.
7 *Id.*

to investigate all claims pending by all parties and file a report with the court regarding the merits of the claims.[8] The Order was only effective for 180 days.[9] Mr. Lester filed his Report of Temporary Administrator Pending Contest on January 14, 2016.[10]

Against Mr. Lester, Plaintiffs allege causes of action for:

- "18 U.S.C. §1962(d) the Enterprise;"[11]
- "The Racketeering Conspiracy 18 U.S.C. §1962(c);"[12]
- Three claims for "Honest Services 18 U.S.C. §1346 and 2;"[13]
- "Wire Fraud 18 U.S.C. §1343 and 2;"[14]
- "Fraud 18 U.S.C. §1001 and 2;"[15]
- "Theft/Hobbs Act Extortion Texas Penal Codes § 31.02 & 3.03 and 18 U.S.C. §1951(b)(2) and 2;"[16] and
- Three conspiracy claims for "Conspiracy to Obstruct Justice 18 U.S.C. §371;"[17] "Conspiracy Re: State Law Theft/Extortion – in Concert Aiding and Abetting;"[18] and "Conspiracy to Violate 18 U.S.C. §§ 242 and 2, & 42 U.S.C. §§983 and 1985."[19]

But despite the many "claims", Plaintiffs complain of only one specific action taken by Mr. Lester. Plaintiffs allege that Mr. Lester filed a "fictitious report into the Harris County Probate

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8 *Id.*
9 *Id.*
10 Exhibit B.
11 *See* Complaint, at §IV, ¶¶ 35-58.
12 *Id.* at ¶¶ 59-120.
13 *Id.* at ¶¶ 121, 122, and 123.
14 *Id.* at ¶ 123
15 *Id.* at ¶123
16 *Id* at ¶123
17 *Id* at ¶123
18 *Id* at ¶132
19 *Id* at ¶159

Court No.4."[20] Plaintiffs have asserted no factual content sufficient to maintain any cause of action against Mr. Lester. The Complaint should be dismissed with prejudice.

IV.
THE COURT SHOULD DISMISS THE PLAINTIFFS' CLAIMS AGAINST MR. LESTER.

A. PLAINTIFFS HAVE NOT ADEQUATELY PLEADED THE NECESSARY PREDICATE ACTS.

Based on virtually no specific allegations of a criminal enterprise beyond dissatisfaction with the public proceedings in the underlying case, the Plaintiffs have asserted two RICO claims against Mr. Lester. Plaintiffs have brought their RICO action under 18 U.S.C. §1962(c) AND 18 U.S.C. §1962(d).

To avoid dismissal for failure to state a claim, a plaintiff must articulate how each defendant engaged in a prohibited pattern of racketeering activity or "predicate acts." [21] Plaintiffs fail to meet this standard.

With respect to Mr. Lester, Plaintiffs have listed four federal crimes that appear in 18 U.S.C § 196l(l)'s definition of racketeering activity. However, to successfully plead a RICO claim under § 1962(c), Plaintiffs must do more than simple list the predicate act crimes necessary to establish a pattern of racketeering activity. Plaintiffs must also plead specific facts that, if true, would establish that each predicate act was in fact committed by Mr. Lester. [22] Plaintiffs' Complaint fails to meet this standard. For most of the identified predicated acts, Plaintiffs simply identify the statute, provide a general description of the conduct it prohibits, and then asserts that Mr. Lester violated the statute. However, these allegations are baseless on their face and a far cry from the truth. Accordingly, Plaintiffs' claims must be dismissed.

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[20] *See* Complaint, Paragraph 123.
[21] *Cadle Co. v. Schultz*, 779 F. Supp. 392, 396 (N.D. Tex. 1991)
[22] *Id. at 880.*

B. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(c).

As to the claims under § 1962(c), the Plaintiffs did not allege with the requisite factual specificity (or beyond merely conclusory statements) any predicate acts committed by Mr. Lester. Similarly, the Plaintiffs did not allege and the law would not sustain any assertion that Mr. Lester conducted, controlled, or participated in an enterprise under the standard set forth by the Supreme Court in *Reves*.[23]

1. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).

Most of Plaintiffs' predicate acts are, at their core, allegations of fraudulent behavior. Because all of Plaintiffs' allegations are fundamentally grounded in fraud, "rule 9(b) applies and the predicate acts alleged must be plead with particularity."[24]

Underpinning the heightened pleading requirement for fraud claims is the federal courts' determination that "defendants are not required to guess what statements were made in connection with a plaintiffs claim and how and why they are fraudulent."[25] Thus, Plaintiffs' fraud allegations must specifically refer to the "time, place, and contents of the false representations, as well as the identity of the person making the representation and what the person obtained thereby."[26] When pleading a claim for mail or wire fraud, Plaintiffs must specify the content of the alleged communications and how those communications advanced the alleged scheme to defraud the Plaintiffs.[27]

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[23] 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).
[24] *Walsh v. America's Tele- Network Corp.*, 195 F. Supp. 2d 840, 846 (E.D. Tex. 2002) (citing *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 177 (5th Cir. 1997)); FED. R. C1v. P. 9(b) ("In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.").
[25] *Allstate Insurance Company v. Benhamou*, No. 4:15-CV-00367, 2016 WL 3126423, at *17 (S.D. Tex. June 2, 2016).
[26] *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1138 (5th Cir. 1992); *Skidmore Energy, Inc. v. KPMG LLP*, No. CIV.A.3:03CV2138-B, 2004 WL 3019097, at *3 (N.D. Tex. Dec. 28, 2004).
[27] *Elliott*, 867 F.2d at 882; *Old Time Enterprises*, 862 F.2d at 1218; *Tel-Phonic Servs.*, 975 F.2d at 1138.

Here, Plaintiffs have failed to allege the contents of any of the purported false representations made by Mr. Lester, or how they advanced the alleged scheme to defraud Plaintiffs, flaws that are fatal to their claims. Moreover, as stated above, Plaintiffs offer no real factual support for their obstruction of justice, mail and wire-fraud allegations, or truly any of their claims. Given these fatal defects, the Court should dismiss Plaintiffs' RICO action.

2. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

RICO cases based upon fraud require a showing of detrimental reliance by the plaintiff.[28] This requirement, the Fifth Circuit has determined, is consistent with the Supreme Court's admonition in *Holmes* that federal courts employ traditional notions of proximate cause when assessing the nexus between a plaintiffs' injuries and the underlying RICO violation.[29] But, despite this firmly established requirement, Plaintiffs in this case have asserted no allegations-indeed, not even a conclusory allegation-detailing how they purportedly relied upon Mr. Lester's allegedly fraudulent conduct. Accordingly, Plaintiffs' RICO claims, most of which are fraud-based, should be dismissed.

C. PLAINTIFFS HAVE FAILED TO PLEAD A COGNIZABLE RICO ENTERPRISE

1. Plaintiffs Enterprise Allegations Are Too Vague and Conclusory

An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[30] The Fifth Circuit requires that "[i]n order to avoid dismissal for failure to state a claim, a plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an enterprise."[31] To

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[28] *Summit Properties, Inc. v. Hoechst Celanese Corp.*, 214 F.3d 556, 562 (5th Cir. 2000) (dismissing RICO claims where plaintiff failed to allege reliance in connection with fraud-based predicate acts)
[29] *See Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 279 (1992); *Sandwich Chef of Texas, Inc. v. Reliance Nat'l Indemnity Ins. Co.*, 319 F.3d 205,219 (5th Cir. 2003); *In re MasterCard International, Inc.*, 313 F.2d 257, 263 (5th Cir. 2002) (noting that district court's reliance analysis was "particularly compelling").
[30] 18 U.S.C. § 1961(4); *see also Elliott*, 867 F.2d at 881.
[31] *Elliott*, 867 F.2d at 881.

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establish an "association in fact" enterprise under 18 U.S.C. § 1961(4) a plaintiff must show "'evidence of an ongoing organization, formal or informal, and ... evidence that the various associates function as a continuing unit.'"[32]

The Supreme Court in *Turkette* stated that the "enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct."[33] The Fifth Circuit has enumerated the requirements of an enterprise as requiring that it "(l) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit shown by a hierarchical or consensual decision making structure."[34]

"[T]wo individuals who join together for the commission of one discrete criminal offense have not created an "association-in-fact" enterprise, even if they commit two predicate acts during the commission of this offense, because their relationship to one another has no continuity."[35] However, "if the individuals associate together to commit several criminal acts, their relationship gains an ongoing nature, coming within the purview of RICO."[36]

Plaintiffs have provided virtually no facts concerning the alleged enterprise, how it operated, how decisions were made, what conduct beyond the alleged predicate acts they purportedly engaged in, how the operations of the individuals were carried out, or how they went about accomplishing their purported goals. Instead, Plaintiffs allege the text book elements of an enterprise characterized with inflammatory exaggerations and baseless

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[32] *Atkinson v. Anadarko Bank & Trust Co.*, 808 F.2d 438, 440-41 (5th Cir. 1987) (quoting *U.S. v. Turkette*, 452 U.S. 576, 583 (1981)).
[33] 452 U.S. at 583.
[34] *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 433 (5th Cir.1990).
[35] *Montesano et al. v. Seafirst Commercial Corp. et al.*, 818 F.2d 423, 426-27 (5th Cir. 1987).
[36] *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 749 (5th Cir. 1989) (quoting *Montesano*, 818 2d at 427).

conclusions.

Plaintiffs fail to allege any specific facts that would demonstrate a conspiracy of any kind-when it began, who was actually a part of such conspiracy or any facts suggesting that any defendant had actual knowledge that any of the seemingly harmless acts were done in furtherance of some secret conspiracy. In the absence of these, or any other supporting facts, Plaintiffs' pleadings are simply insufficient.

Given RICO's "draconian" penalties and the fact that the very pendency of a RICO suit can be stigmatizing and costly, Plaintiffs should be required to satisfy their pleading obligations.[37] Hence, to avert dismissal under Rule 12(b)(6), a civil RICO complaint must, at a bare minimum, state facts sufficient to portray (i) specific instances of racketeering activity within the reach of the RICO statute; and (ii) a causal nexus between that activity and the harm alleged."[38] Plaintiffs have failed to meet even this "bare minimum" requirement. Therefore, this case should be dismissed.

2. Plaintiffs alleged enterprise lacks continuity.

Because the RICO Act was enacted to address continuing threats of racketeering activities, the alleged RICO enterprises must meet certain "continuity" requirements.39 Specifically, "[a]n association-in fact enterprise (1) must have an existence separate and apart from the pattern of racketeering, (2) must be an ongoing organization and (3) its members must function as a continuing unit as shown by a hierarchical or consensual decision making structure."[40] These requirements limit the application of the RICO Act, and serve to prevent an overly-broad

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[37] *See Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997) (characterizing RICO's penalties as "draconian"); *Miranda v. Ponce Federal Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (characterizing RICO cases as "stigmatizing" and "costly").

[38] *Miranda*, 948 F.2d at 44-45 (emphasis added) (affirming dismissal of RICO claims where the pleadings "though copious, [were] vague and inexplicit").

[39] *See, e.g., Delta Truck*, 855 F.2d at 242-43 ("The concept of continuity as a means of controlling the scope of RICO has also been incorporated into the enterprise element of section 1962.").

[40] *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995).

application to general commercial conduct that was never really the intended focus of the Act.[41]

Here, the purported enterprise fails to meet RICO's "continuity" requirement on all three levels. First, nothing in the Complaint even remotely suggests that the alleged enterprise is an ongoing organization that maintains operations that are separate and apart from the alleged predicate acts. Second, there are no facts in the Complaint suggesting that the enterprise is an ongoing organization, or that the various enterprise members function as a continuing unit. Lastly, there are no allegations of any hierarchical or consensual decision making structure. The absence of factual support for these key allegations is fatal, and thus, Plaintiffs have failed to meet the pleading standard for a cognizable enterprise.

D. PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD A PATTERN OF RACKETEERING ACTIVITY.

Plaintiffs have also failed to plead facts sufficient to show a "pattern of racketeering activity," an element comprised of (1) the predicate acts and (2) a pattern of such acts.[42] To properly allege a "pattern" of predicate acts, Plaintiffs must plead both that the acts are related to each other and that those acts either constitute or threaten long-term criminal activity, thereby reflecting "continuity."[43] When used in discussion of predicate acts, the term "continuity" has a meaning that differs from the "continuity" requirement imposed on RICO enterprises, even though the label is the same. Establishing continuity in this context requires facts sufficient to show that the predicate acts "amount to or threaten continuous racketeering activity."[44] Such continuity may refer "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."[45]

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[41] *Delta Truck*, 855 F.2d at 242-43.
[42] *See In re Burzynski* 989 F.2d 989 733, 741-42 (5th Cir. 1993) (citing *Delta Truck*, 855 F.2d at 242-43).
[43] *HJ., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).
[44] *In re Burzynski*, 989 F.2d at 742-43 (finding no continuity where the acts complained of had ended and, thus, did not threaten long-term criminal activity).
[45] *Id.* (quoting *HJ., Inc.*, 492 U.S. at241).

Here, Plaintiffs alleges several times throughout their Complaint that Mr. Lester engaged in a "pattern of racketeering." However, their conclusory allegations fail to set forth the necessary pattern of predicate acts and the supporting facts to establish that they amount to or threaten continuous racketeering activity.

E. THE PLAINTIFFS HAVE NOT STATED A RICO CLAIM UNDER SECTION 1962(d).

To prove a RICO conspiracy, the Plaintiffs must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.[46] A RICO conspiracy thus has RICO-specific requirements—an agreement by at least two conspirators to engage in a pattern of racketeering.[47] Mere association with the enterprise is not actionable; agreement is essential.[48] Further, if a plaintiff fails to properly plead a RICO claim under §§ 1962(a), (b), or (c), it correspondingly fails to properly plead a conspiracy claim under § 1962(d).[49]

The Court should dismiss the § 1962(d) claim because the Plaintiffs failed to state a claim under §§ 1962(a-c). As a result, the conspiracy claims fail under controlling Fifth Circuit authority.50 The Court should additionally dismiss the claim because the Plaintiffs have not alleged any specific facts detailing an agreement to commit a RICO offense, what the agreement was, how it was reached, and when it was entered.51 These types of missing details are necessary to state a claim under § 1962(d). As explained in *Twombly,* allegations that a defendant acted in ways consistent with a conspiratorial agreement, but also equally well explained by legitimate

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46 *TruGreen Landcare, L.L.C. v. Scott*, 512 F.Supp.2d 613, 625 n.11 (N.D. Tex. 2007) (Fitzwater, J.) (quoting *United States v. Delgado*, 401 F.3d 290, 296 (5th Cir. 2005)).

47 *Id.*

48 *Baumer*, 8 F.3d at 1344.

49 *N. Cypress Med. Ctr. Operating Co*, 781 F.3d at 203.

50 *Id.*

51 *Lewis v. Sprock*, 612 F.Supp. 1316, 1325 (N.D. Cal. 1985); *Lui Ciro, Inc. v. Ciro, Inc.*, 895 F.Supp. 1365 (D. Hawaii 1995).

economic incentives, do not suffice to show illegality.[52] So too, unsupported conclusory allegations are not entitled to be assumed true, and dismissal is proper when a conspiracy allegation does not plausibly suggest an illicit accord because the conduct could be compatible with or explained by, lawful, unchoreographed free-market behavior."[53] Because the Plaintiffs have failed to state a claim upon which relief may be granted, the Court should grant this Motion to Dismiss.

1. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

To recover damages under the RICO Act, Plaintiffs must prove that they suffered an injury to their "business or property by reason of a statutory violation. 18 U.S.C. § 1964(c). The "by reason of" language of RICO has been interpreted by the Supreme Court and to require a showing that the violation was the "but for" cause and "proximate" cause of the injury.[54] That is, a plaintiff must allege facts which show that, "but for" defendant's conduct, the plaintiff would not have suffered the injuries claimed.[55] A plaintiff must also allege facts which show that its alleged injuries were a foreseeable consequence of the defendant's conduct.[56] More plainly stated, a RICO plaintiff "only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the [RICO] violation."[57]

Thus, to avoid a Rule 12(b)(6) dismissal, Plaintiffs must allege the existence of a "direct relation between the injury asserted and the injurious conduct alleged."[58] These allegations must

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[52] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).
[53] *Ashcroft v. Iqbal*, 556 U.S. 662, 680, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009).
[54] *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, 331 F.Supp.2d 513, 559 (E.D. Tex. 2004)(citing Holmes, 503 U.S. at 279).
[55] Ocean Energy II. V. Alexander & *Alexander, Inc.*, 868 F.2d 740, 744 (5th Cir. 1989).
[56] *Navigant Consulting, Inc. v. Wilkinson*, 508 F.3d 277,289 (5th Cir. 2007).
[57] *Sedima*, 473 U.S. at 496.
[58] *See, e.g., Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 452 (2006), 1996 (2006); *Old Time Enterprises*, 862 F.2d at 1219.

include specific facts; conclusory and generalized allegations are insufficient.[59] "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiffs' injuries."[60] The United States Supreme Court emphasized RICO's proximate-cause requirement in *Anza v. Ideal Steel Supply Corp.* In explaining its conclusion, the Supreme Court identified circumstances that emphasized the lack of the necessary causal connection. One such circumstance was the difficulty the trial court would have accurately ascertaining damages. The "less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiffs' damages attributable to the violation, as distinct from other independent factors."[61] If the case were allowed to go forward, the court reasoned, the trial court would be faced with the difficult task of accurately ascertaining the plaintiff's damages. [62]

Clearly, the allegations in the Complaint are insufficient to properly plead a violation of the RICO Act because they are vague, conclusory and generalized. Nevertheless, just like in *Anza*, Plaintiffs have alleged a similar disjunctive causation pattern with respect to their claims against Mr. Lester. There is not a direct relation between the injury asserted and the injurious conduct alleged as anticipated by *Anza*. At a minimum, the necessary causal link is missing. Because Plaintiffs have failed to allege facts necessary to meet the Supreme Court's high proximate-causation standard, this case should be dismissed.

F. PLAINTIFFS' CLAIMS FOR "HOBBS ACT," "WIRE FRAUD," "FRAUD UNDER 18 U.S.C. 51001," AND "HONEST SERVICES" FAIL BECAUSE THOSE STATUTES DO NOT CREATE PRIVATE CAUSES OF ACTION.

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[59] *Fernandez-Montez v. Allied Pilots Ass'n*, 987 F.2d 278,284 (5th Cir. 1993).
[60] *Anza*, 547 U.S. at 452.
[61] *Id.*
[62] *Id*

The Plaintiffs purport to assert claims against Mr. Lester for violation of the Hobbs Act, Wire Fraud, "Fraud under 18 U.S.C. 1001," and "Honest Services," but those acts do not create private causes of action. Thus, those claims should all be dismissed.

1. The Hobbs Act does not create a private cause of action.

The Hobbs Act does not create a private cause of action. *Moore v. Garner*, No. Civ.A. 6:04-CV-79, 2005 WL 1022088, at *4 (E.D. Tex. 2005) ("Nor does the Hobbs Act create a private cause of action") (citing *Wisdom v. First Midwest Bank*, 167 F.3d 402, 408 (8th Cir. 1999)). This is settled law. *See, e.g., Campbel v. Austin Air Systems, Ltd.*, 423 F. Supp. 2d 61, 72 (W.D.N.Y. September 29, 2005) ("[F]ederal courts have consistently found that the Hobbs Act does not support a private cause of action."); *Barge v. Apple Computer,* No. 95 CIV. 9715 (KMW), 1997 WL 394935, at *1 (S.D.N.Y. July 15, 1997), affd, 164 F.3d 617 (2nd Cir. 1998) ("[C]ourts that have considered this question have consistently found that the Hobbs Act does not support a private cause of action."); *John's Insulation, Inc. v. Siska Constr. Co., Inc.*, 774 F. Supp. 156, 163 (S.D.N.Y. 1991) ("There is no implied private cause of action under the Hobbs Act.").

Thus, Plaintiffs' Hobbs Act claim against Mr. Lester fails.

2. The Wire Fraud statute does not create a private cause of action.

The wire fraud statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) (citing *Napper v. Anderson, Hensley, Shields, Bradford & Pritchard*, 500 F.2d 634, 636 (5th Cir. 1974) for its holding that there is "no private cause of action under the mail-and wire fraud statutes, 18 U.S.C. 1341 and 1343"); *see also Morse v. Stanley*, ICV230, 2012 WL 1014996, at *2 (E.D. Tex. Mar. 23, 2012) ("18 U.S.C. 1343 is a criminal statute pertaining to wire fraud and does

not provide Plaintiff with a private cause of action."); *Benitez v. Rumage,* CIV.A. c-11-208, 2011 WL 3236199, at *l (S.D. Tex. July 27, 201 1) (the wire fraud statute "do[es] not provide a private cause of action").

Thus, Plaintiffs' Wire Fraud act claim against Mr. Lester fails.

3. The claim for "Fraud under 18 U.S.C. 91001" is not a private cause of action.

Plaintiffs' claim for "Fraud 18 U.S.C. 1001" fails, as well, because that statute does not create a private cause of action. *See Thompson v. Wells Fargo Bank, N.A.*, CV H-15-598, 2016 WL 164114, at *3 (S.D. Tex. Jan. 14, 2016) (Rosenthal, J.) ("The Thompsons assert causes of action under 18 U.S.C. 1001, 1010, 1014, 1341, 1343, and 1344. These federal criminal statutes do not provide a private cause of action.") (emphasis added). Again, this is settled law. *See Blaze v. Payne*, 819 F.2d 128, 130 (5th Cir. 1987) ("Finding no congressional intent to create a private right of action under 1001 (b), Blaze has failed to state a claim upon which relief could be granted, and the district court's grant of summary judgment was proper."); *Grant v. CPC Logistics Inc.*, 3:12-CV-200-L BK, 2012 WL 601149, at *l (N.D. Tex. Feb. 1, 2012), report and recommendation adopted, 3:12-CV-200-L, 2012 WL 601128 (N.D. Tex. Feb. 23, 2012) ("Federal courts have repeatedly held that violations of criminal statutes, such as 18 U.S.C. 1001, 1505 and 1621, do not give rise to a private right of action.") (emphasis added); *Parker v. Blake*, CIV. A. 08-184, 2008 WL 4092070, at *3 (W.D. La. Aug. 29, 2008) ("Section 1001 provides criminal penalties for persons convicted of fraud or false statements during the course of certain dealings with the federal government As above, this criminal statute, were it applicable to allegations made by plaintiff still would not create a private civil cause of action or entitlement to monetary relief thereunder."); *Doyon v. U.S.*, No. A-07-CA977-SS, 2008 WL 2626837, at *4 (W.D. Tex. June 26, 2008) (holding that there is "no private cause of action under 18 U.S.C. 1001 ").

Thus, Plaintiffs' claim for "Fraud 18 U.S.C. 1001" fails.

4. The claim for "Honest Services" is not a private cause of action.

Plaintiffs allege three claims for "honest services," based on 18 U.S.C. 1346.[63] But 18 U.S.C. §1346 does not create a private cause of action either. *See Eberhardt v. Braud*, 16-CV-3153, 2016 WL 3620709, at *3 (C.D. 111. June 29, 2016) ("Plaintiff attempts to bring a private right of action under 18 U.S.C. 1346 and 18 U.S.C. §1951, but those criminal statutes do not contain an express or implied private right of action."); *Alford v. S. Gen. Ins.*, 7:12-CV-00273-BR, 2013 WL 1010584, at *2 (E.D.N.C. Mar. 14, 2013) (holding that a "claim for honest services fraud under 18 U.S.C. 1346" must be dismissed "pursuant to Rule 12(b)(6) because a private right of action for a violation of that law does not exist"); *Hooten v. Greggo & Ferrara Co.*, CIV. 10-776-RGA, 2012 WL 4718648, at *6 (D. Del. Oct. 3, 2012) ("18 U.S.C. 1341 and 1346 . . . are found in the federal criminal code. Neither §1341 or 1346 allow for a private cause of action.").

Thus, Plaintiffs' three claims against Mr. Lester for "Honest Services" fail.

5. Plaintiffs rely on impermissible collective pleading.

"A complaint does not satisfy the requirements of *Iqbal* and *Twombly* by lumping together all defendants, while providing no factual basis to distinguish their conduct."[64] And the pleading requirements of Rule 9(b) likewise demand specific and separate allegations against each defendant.[65]

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[63] See Complaint at ¶¶121-123.

[64] *In re Parkcentral Glob. Litig.*, 884 F. Supp. 2d 464, 471 (N.D. Tex. 2012) ("It is impermissible to make general allegations that lump all defendants together; rather, the complaint must segregate the alleged wrongdoing of No. I from another.").

[65] See *Dimas v. Vanderbilt Mortg & Fin., Inc.*, No. C-10-68, 2010 WL 1875803, at *8 (S.D. Tex. May 6, 2010) ("[W]hile the Complaint makes several general allegations of fraud, it often fails to specify the role each Defendant played in the alleged scheme."); *Unimobil 84, Inc. v. Spurney*, 797 F.2d 214, 217 (5th Cir. 1986) (affirming dismissal of fraud claim for not stating with particularity "what representations each defendant made").

Here, Plaintiffs offer no individualized allegations about any wrongful conduct they allege against Mr. Lester. Instead, Plaintiffs' vague and fanciful pleadings are lobbed at all Defendants, with no discernible specific or separate allegations for Mr. Lester. This is insufficient to state a claim.

V.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Mr. Lester respectfully prays that this Court GRANT this Motion to Dismiss, dismiss all of the Plaintiffs' claims against Mr. Lester with prejudice, and award Mr. Lester all such other relief to which he may be justly entitled.

Respectfully submitted,

ostrommorris, PLLC

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ATTORNEYS FOR GREGORY A. LESTER

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2016, a true and correct copy of the foregoing instrument was served on all known counsel of record through the Court's CM/ECF system, which constitutes service on all parties in accordance with the Federal Rules of Civil Procedure.

STACY L. KELLY

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY ADMINISTRATOR PENDING CONTEST PURSUANT TO TEXAS ESTATES CODE 452.051

On March 23, 2015, the Court heard and approved Carl Henry Brunsting's Application to Resign as Independent Executor. On July 21, 2015 the Court heard and considered CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE; Anita Kay Brunsting's OBJECTION TO CANDACE CURTS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE; AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR, RESPONSE TO CARL BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS'S APPLICATION FOR APPOINTMENT AS SUCCESSOSR EXECUTOR; Carl Brunsting's OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR; and Candace Curtis' RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTINGS APPLICATION FOR APPOINTMENT.

The Court finds that the Court has jurisdiction and venue over Decedent's Estate; that it is in the best interest of the Estate that a personal representative be immediately appointed; and that the parties have reached an agreement regarding the appointment of a Temporary Administrator Pending Contest with limited powers, which was announced on the record at said hearing, the terms of which are substantially as follows:

1. GREG LESTER would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed Temporary Administrator

Pending Contest of this Estate with limited powers to evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC, 2) Anita Kay Brunsting f/k/a Anita Kay Riley, Individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Anita Kay Brunsting Personal Asset Trust; and 3) Amy Ruth Brunsting f/k/a Amy Ruth Tschirhart, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedcent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Tschirhart Personal Asset Trust; and 4) Carole Ann Brunsting, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust. Greg Lester, Temporary Administrator Pending Contest will report to the Court regarding the merits of these claims on or before the expiration of this Order. This Order shall expire 180 days after the date that it is signed.

2. Amy Brunsting and Anita Brunsting, as the Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust agree to advance funds to the Estate of Nelva E. Brunsting (the "Estate") to pay all court approved fees and expenses of the Temporary Administrator Pending Contest.

3. The Temporary Administrator Pending Contest has the authority to seek a continuance in the "District Court Case" in which the Estate is a plaintiff, of the hearing on the Motion for Summary Judgment current scheduled for July 31, 2015 and to seek continuance of the October, 2015 trial setting in that matter.

4. Amy Brunsting and Candace Louise Curtis each agree to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each Estate, during the pendency of the Temporary Administration of this Estate.

IT IS THEREFORE ORDED that Greg Lester is hereby appointed Temporary Administrator Pending Contest of this Estate and shall give a cash Bond in the amount of $100.00 (On Hundred Dollars), conditioned as required by law; that the Temporary Administration shall continue until the expiration of 180 days after the date of this Order, or as may be further ordered by this court; that the Clerk of this Court shall issue Letters of Temporary Administration when the Temporary Administrator has qualified according to law; and that the Temporary Administrator shall have the powers enumerated by the agreement of the parties as restated above.

Signed July 23, 2015.

Christine Butts, Judge
Harris County Probate Court No. 4

DV

PROBATE COURT 4

FILED
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Stan Stanart
County Clerk
Harris County

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST

On July 24, 2015 an Order of this Court, signed by Judge Christine Butts on July 23, 2015, was filed in the above styled and numbered case. In this Order the Court stated that Greg Lester was appointed Temporary Administrator Pending Contest of this estate. The Court directed that Greg Lester will report to the Court regarding the merits of the claims in this case on or before the expiration of this Order. The Order will expire on or about January 20, 2016, which is 180 days after the date that the Order was signed.

BACKGROUND

The Brunsting Family

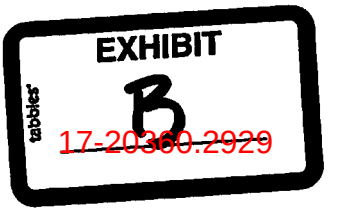
Nelva and Elmer Brunsting were married and had five (5) children: Candace Louise Curtis (" Candace"), Carol Ann Brunsting (" Carol"), Carl Henry Brunsting ("Carl"), Amy Ruth Tschirhart ("Amy") and Anita Kay Riley ("Anita").

The Brunsting Family Living Trust

Elmer Brunsting and Nelva Brunsting (herein referred to as "Settlors") created the Brunsting Family Living Trust (the "Trust") on October 10, 1996. The Trust was subsequently restated in its entirety on January 12, 2005. A copy of the Restatement of the Brunsting Family Living Trust ("Restatement") is attached hereto as the first exhibit.

The Trust could be amended during the lifetime of the original Settlors. However, once a Settlor dies, the Trust could not be amended except by court order.

Each Settlor could provide for a different disposition of their share of the Trust by executing a qualified beneficiary designation for that person's share alone.



Trustees of the Brunsting Family Living Trust

The initial trustees of the Trust were Elmer Brunsting and Nelva Brunsting. The Restatement provided that if both original Co-Trustees failed or ceased to serve, then Carl Henry Brunsting and Amy Ruth Tschirhart would serve as Co-Trustees.

Each original Trustee has the right to appoint successor trustees to serve in the event the original Trustee ceases to serve by death, disability, or for any reason, and may specify any conditions on the succession and service as may be permitted by law. The Restatement also provided that the original Trustees may each remove any trustee they have individually named as their respective successor.

On September 6, 2007, a First Amendment to the Restatement to the Brunsting Family Living Trust was executed by Settlors which changed the succession of successor trustees, a copy of which is attached hereto as the second exhibit. This document appointed Carl Henry Brunsting and Candace Louise Curtis as successor co-trustees if both original Trustees fail or cease to serve. If either Carl Henry Brunsting or Candace Louise Curtis should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then The Frost National Bank shall serve as the sole successor trustee. The First Amendment effectively removed Amy Ruth Tschirhart as the successor co-trustee and substituted Candace Louise Curtis in her place and stead.

Elmer Brunsting died on April 1, 2009, and after her husband's death, Nelva Brunsting served alone as the original trustee.

On December 21, 2010, Nelva Brunsting exercised her right to designate a successor trustee. Nelva Brunsting executed an Appointment of Successor Trustee, a copy of which is attached hereto as the third exhibit. The Appointment of Successor Trustee stated that if Nelva Brunsting resigned as Trustee, then Anita Kay Brunsting would serve as successor trustee, Amy Ruth Tschirhart would serve as the second successor, and The Frost National Bank as the third successor. If Nelva Brunsting fails or ceases to serve as trustee because of her death or disability, then Anita Kay Brunsting and Amy Ruth Tschirhart would serve as successor co-trustees.

On the same date, on December 21, 2010, Nelva Brunsting also exercised her right to resign as Trustee. Specifically, Nelva Brunsting resigned as Trustee of the Trust, the Nelva Brunsting Survivor's Trust and Elmer Brunsting's Decedent's Trust and appointed Anita Kay Brunsting as trustee of the aforementioned Trusts.

Split of Brunsting Family Living Trust into the Survivor's Trust and the Decedent's Trust

After Elmer Brunsting's death on April 1, 2009, the Trust split into two trusts—the Nelva Brunsting Survivor's Trust (the "Survivor's Trust") and the Elmer Brunsting Decedent's Trust

(the "Decedent's Trust"). Nelva Brunsting, as the original Trustee, served as Trustee over both the Survivor's and Decedent's Trusts.

There is no power of appointment related to the Trust which was exercised by Elmer Brunsting prior to his death on April 1, 2009.

Pursuant to the Restatement, the beneficiary of the Survivor's Trust, Nelva Brunsting, had an unlimited and unrestricted general power of appointment over the entire principal and any accrued but undistributed income of the Survivor's Trust. This general power of appointment was very broad, and granted the survivor the power to appoint the Survivor's Trust to anyone, outright or in trust, in equal or unequal proportions.

The Decedent's Trust would terminate at the surviving Settlor's death or on the death of Nelva Brunsting. Pursuant to the Restatement, the survivor had a limited testamentary power of appointment to appoint the undistributed principal and income to the descendants of the Settlors only. While Nelva Brunsting (as the surviving Settlor) was restricted to only appointing the assets to her descendants, the assets of the Decedent's Trust could be appointed by Nelva Brunsting (as the surviving Settlor) to her descendants in any proportion and on terms and conditions as the survivor elects.

Nelva Brunsting's June 15, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment

On June 15, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fourth exhibit. This document exercised Nelva Brunsting's general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust.

Specifically, Nelva Brunsting's exercise appointed the Survivor's Trust and Decedent's Trust to be distributed equally among Nelva and Elmer Brunsting's five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. This document also expressed Nelva Brunsting's intent that upon the death of Nelva Brunsting, any funds advanced to Nelva Brunsting's descendants would be deducted from that particular descendant's share of assets received from the Survivor's Trust and Decedent's Trust.

Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment

On August 25, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fifth exhibit. This document appears to have superseded the June 15,

2010 Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement.

In this document, Nelva Brunsting exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust. The document stated that the Trustee would pay the balance of both the Survivor's and Decedent's Trust equally to each of her five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley, and such assets would be held in a separate Personal Asset Trust for the benefit of each of her children. With the exception of Carl and Candace, each descendant would be the trustee of their own Personal Asset Trust. Specifically, Amy Ruth Tschirhart, Anita Kay Brunsting and Carol Ann Brunsting would each be the trustee of their own Personal Asset Trust. Anita Kay Riley and Amy Ruth Tschirhart were appointed the co-trustees of the Personal Asset Trust for Carl Henry Brunsting and the Personal Asset Trust for Candace Louise Curtis. The document also detailed the administrative provisions relating to the Personal Asset Trusts for Nelva and Elmer Brunsting's descendants.

The major change that resulted from the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement was that Carl Henry Brunsting and Candace Louis Curtis could not elect to be the individual trustee of their own Personal Asset Trusts. The August 25, 2010 document also provided different administrative provisions for the trusts created for the descendants than those provided under Article X of the Restatement.

Notably, the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement contained a no contest clause which provided a lengthy list of prohibited actions that would fall under such no contest clause. The no contest clause provided that any beneficiary who took such prohibited actions would forfeit their share and be treated as if they predeceased Nelva and Elmer Brunsting.

The Death of Nelva Brunsting

Nelva Brunsting died on November 11, 2011, and the Survivor's Trust and Decedent's Trust terminated and were to pass to the Personal Asset Trusts for Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. As detailed above, these Personal Asset Trusts were created pursuant to Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

CLAIMS

The Probate Court Claims Filed by Carl Henry Brunsting and Candace Louise Curtis

Carl Henry Brunsting and Candace Louise Curtis have filed claims against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting in the Estate of Nelva E. Brunsting, Deceased, pending in Harris County Probate Court Number Four (4) under Cause Number 412,249 (hereinafter referred to as the "Probate Court Claims").

Carl Henry Brunsting and Candace Louise Curtis' Probate Court Claims are twofold. First, individual tort claims have been asserted against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting for actions taken either in their fiduciary capacity or purported actions taken which have harmed Carl and Candace. The second category of Carl and Candace's Probate Court Claims relate to requests for declaratory relief in construing the Brunsting Family Living Trust.

The Probate Court Claims that include individual tort claims against Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting contain multiple questions of fact, which are within the province of the jury. Specifically, Carl Henry Brunsting asserted the following tort claims:

1. Breach of fiduciary duty
2. Conversion
3. Tortious interference with inheritance rights
4. Constructive Trust over Trust assets
5. Fraud, specifically, misrepresentation of facts to Decedent (it is questionable whether Carl and Candace have standing to pursue these claims)
6. Civil Conspiracy
7. Demand for accounting of the Trusts and non-probate accounts
8. Liability of Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting under Texas Property Code § 114.031
9. Removal of Trustees
10. Request for Receivership

The Probate Court Claims asserted by Candace Louise Curtis are as follows:

1. Breach of fiduciary duty
2. Fraud resulting from misrepresentation of material facts to Candace
3. Constructive fraud
4. Money had and received
5. Conversion
6. Tortious interference with inheritance rights
7. Unjust enrichment

8. Civil Conspiracy
9. Demand for accounting of the Trusts and non-probate accounts

As a result of the above Probate Court Claims containing questions of fact within the province of the jury, the Temporary Administrator has refrained from evaluating such claims.

The questions of law presented in both Carl Henry Brunsting and Candace Louise Curtis' requests for declaratory relief contained in the Probate Court Claims are as follows:

1. Was Nelva Brunsting's December 21, 2010 Resignation of Original Trustee and Appointment of Successor Trustee valid?

2. Were the June 15, 2010 and August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement an inappropriate alteration of the terms of the Trust?

3. Did the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement appoint all of the Trust property?

4. Did the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement revoke the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement?

5. Is the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement effective?

6. Do the pleadings filed by Carl and Candace violate the No Contest Clause and is the No Contest Clause void as against public policy?

Based on the powers granted to Nelva Brunsting in the Restatement, Nelva Brunsting appears to have appropriately exercised her right to resign as the original Trustee of the Trust on December 21, 2010, and appointed the successor trustee, Anita Kay Brunsting.

While the Restatement provided that the Trust could not be amended after the death of Nelva or Elmer Brunsting, this did not preclude Nelva Brunsting from exercising her general and limited power of appointments over the Survivor's Trust and Decedent's Trust. Specifically, it appears that Nelva Brunsting appropriately exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over Decedent's Trust by appointing the assets to her five (5) children in trust by and through the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The August 25, 2010 document appears to have superseded and replaced the June 15, 2010 Qualified Beneficiary

Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The Restatement granted Nelva Brunsting the power to appoint such assets in trust and place terms and conditions upon such assets as she desired, including her choice to designate trustees of the Personal Asset Trust of Carl Henry Brunsting and Candace Louise Curtis.

NO CONTEST CLAUSE PROVISIONS

Any claim by Carl Henry Brunsting and Candace Louise Curtis that Nelva Brunsting lacked capacity and/or was subject to undue influence when she executed the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement are questions of fact that are within the province of the jury. However, the no contest clauses in the Qualified Beneficiary Designation and in the Restatement must be considered.

Section "A." of "MISCELLANEOUS PROVISIONS" of the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement is a no contest clause that would disinherit any person who, among other things, makes the claims stated above. The provisions of this no contest clause include language that the no contest clause applies even if a court finds that the judicial proceedings in question originated in good faith and with probable cause. This Court will have to rule on the validity of this provision.

Article XI, Section C., of the Restatement is also a no contest provision. The provisions of this no contest clause are similar in result to those stated above in the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. Therefore, a successful claim that Nelva Brunsting lacked capacity would still be subject to the no contest provisions of the Restatement. In this event the Court would have to rule on the validity of this provision of the Restatement. In both documents the provision is well written.

A decision by the Court upholding either no contest provision might resolve all other issues.

The Lawsuit of Carl Henry Brunsting in the District Court Proceeding

Carl Henry Brunsting, in his capacity as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting, filed claims against Defendants Candace L. Kunz-Freed, Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively the "Defendants"). These claims of Carl Henry Brunsting were filed in the 164th District Court of Harris County, Texas (hereinafter referred to as the "District Court Claims").

Carl Henry Brunsting asserted the following District Court Claims against Defendants in his live pleading, Plaintiff's Third Amended Petition:

1. Negligence
2. Negligent misrepresentation
3. Breach of fiduciary duty
4. Aiding and abetting

5. Fraud
6. Conspiracy
7. Deceptive Trade Practices Act ("DTPA") violations

Carl Henry Brunsting also pled tolling, fraudulent concealment and the discovery rule. Carl Henry Brunsting sought damages of actual damages, forfeiture of fees, treble damages and punitive damages, in addition to his attorney's fees.

Carl Henry Brunsting's District Court Claims center around the changes Nelva Brunsting made by and through the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement and the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

In response to Plaintiff's District Court Claims, Defendants filed a Motion for Traditional and No–Evidence Summary Judgment on the following bases:

1. Carl Henry Brunsting improperly fractured his legal malpractice claims against Defendants;
2. Carl Henry Brunsting's DTPA claim is barred by the professional services exemption; and
3. Carl Henry Brunsting's negligent misrepresentation claim and DTPA claim fail because Carl Henry Brunsting admits he is not aware of any misrepresentations made by Defendants.

Defendants also moved for a No-Evidence Summary Judgment on the basis that Carl Henry Brunsting has no evidence supporting one or more of the elements on the claims he has asserted.

A Notice of Vacancy of Party and Motion to Abate Proceeding was filed by counsel for Carl Henry Brunsting. Carl Henry Brunsting has filed a resignation as executor of the aforementioned estates. Until a successor executor is appointed, there is no plaintiff to pursue the action against Defendants and no plaintiff to respond to Defendants' summary judgment motions. The issue of who will serve as the successor executor of the Estate of Nelva E. Brunsting and the Estate of Elmer Brunsting must be resolved prior to resolving the claims against Defendants.

A Motion to transfer the district court matter to the probate court where both estates are pending has also been filed, but not yet ruled upon.

DAMAGES

Actual damages, of course, are disputed. However, the actual distributions from the Trust after Nelva resigned until shortly after she died seemed to be reasonably well documented. Previously an independent investigation resulted in a listing of the payments made from the trust.

This **REPORT OF MASTER** that was prepared in the case filed in the Southern District of Texas federal court case has the details of the Trust's income, expenses and distributions of stock. A copy of this report is attached hereto as the sixth exhibit.

From this and from changes in the assets of the trust during the period in question the damages can be determined and are basically in three categories.

Transfers of Stock

2,765 shares of Exxon Mobil stock were transferred as follows:

	1, 120	Amy
	160	Anita
	160	Candace
	1, 325	Carol
TOTAL	2,765	

675 shares of Chevron stock were transferred as follows:

	135	Anita
	135	Amy's daughter
	135	Amy's son
	135	Anita's daughter
	135	Anita's son
TOTAL	675	

It is easy to see that these distributions of stock were not evenly distributed to the five siblings. I have been told that the distributions were in fact early distributions of the recipients share from their future trusts. This could be resolved by giving those siblings that did not receive an equal amount at the time of the distributions an equivalent amount of money to settle the dispute. Of course the issue is further complicated by the fact that the value of the two stocks has changed since the time of the distributions. The proper way to determine the amount to be distributed might be to use the value of the stock on the date of the original distributions or the value on the date that money is paid to the damage sibling, whichever is greater.

Payments To/For Family

Approximately $108,000 were paid to or for the benefit of Amy, Anita and Carol or disputed expenses including approximately $41,000 of trustees' fees and approximately $36,000 of legal fees.

Payments To Carol for Nelva's Care

Approximately $160,000 was paid to Carol during the period in question. I was told that Carol was the primary sibling responsible for Nelva's care.

SUMMARY OF DAMAGES

It seems unwise to have made the stock distributions. However, this can be resolved by equalizing the distributions to all the siblings. The issue of trustees' fees can be resolved by comparing the fees to those that are considered as reasonable fees in similar circumstances. The legal fees are obviously justified and will surely increase. The amounts paid to Carol can be examined but should be liberally considered as attributed to Nelva's care and maintenance.

CONCLUSIONS

All of the legal actions taken by Nelva were within her authority under the broad provisions of the Restatement. Unless Nelva is found to have been incompetent at the time that her legal actions were taken all of the changes made in these documents apply in these proceedings.

If Nelva was incompetent at the time that she took these legal actions then a successor trustee would have been appointed under the terms of the Restatement. No claim of her being incompetent was made at that time.

Furthermore, if Nelva had been incompetent the plaintiff in the District Court case would likely have to show that the defendants knew that she was incompetent. For this and other reasons the case should be moved to the Probate Court.

There are damages for the unequal distribution of the shares of Exxon Mobil and Chevron stock. There may be damages for some of the expenditures for trustees' fees and for payments to Carol. These matters should be resolved by agreement. This may require mediation. The considerable legal fees involved in a trial far outweigh the expenses of a mediation and any compromises made by the parties at the mediation.

RECOMMENDATIONS

1. Remove the District Court case to the Probate Court. It is important that there not be different results for the same or similar issues that are in the cases currently in the Probate Court.
2. Require mediation. Point out the huge savings that will result from a mediation versus a trial. Possibly, inform the parties that the Court will rule on the no contest clause first if the matter is not settled in the mediation. Since this ruling could go either way both sides would have considerable incentive to settle. A ruling in favor of the no contest clause would essentially make the matters moot and the plaintiffs would take nothing and lose their inheritance.

17-20360.2938

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
RIK WAYNE MUNSON	§	
Plaintiffs,	§	
	§	
Vs.	§	**C.A. No. 4:16-cv-01969**
	§	
CANDACE KUNZ-FREED, ALBERT	§	
VACEK, JR., BERNARD LYLE	§	
MATHEWS III, NEAL SPIELMAN,	§	
BRADLEY FEATHERSTON, STEPHEN	§	
MENDEL, DARLENE PAYNE SMITH	§	
JASON LESTER, GREGORY LESTER	§	
JILL WILLARD YOUNG, CHRISTINE	§	
RIDDLE BUTSS, CLARINDA	§	
COMSTOCK, TONI BIAMONTE,	§	
BOBBY BAYLESS, ANITA	§	
BRUNSTING AND AMY BRUNSTING	§	

ORDER

Pending before the Court is Gregory A. Lester's Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(6). After having considered the Motion, the Court hereby **GRANTS** Defendant's Motion to Dismiss Complaint. It is therefore,

ORDERED that all claims asserted against Gregory A. Lester are dismissed.

It is so **ORDERED.**

Date

The Honorable Alfred H. Bennett
United States District Judge

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

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON, *Plaintiffs*, vs. CANDACE KUNZ-FREED, ET AL., *Defendants*.	§ § § § § § § § § §	Civil Action No. 4:16-cv-01969

DEFENDANT DARLENE PAYNE SMITH'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

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

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	

DEFENDANT DARLENE PAYNE SMITH'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

Pursuant to FED. R. CIV. P. 12(b)(1) and (6), Defendant Darlene Payne Smith (the "Defendant" or "Smith") files her Motion to Dismiss the Verified Complaint for Damages (the "Complaint") of Plaintiffs Candace Louise Curtis ("Curtis") and Rik Wayne Munson ("Munson") (collectively, the "Plaintiffs") for Lack of Subject Matter Jurisdiction and Failure to State a Claim, and would respectfully show the Court the following:

I.
INTRODUCTION

This is the most recent in a series of lawsuits[1/] involving the Brunsting siblings, all of which emanate from a state court probate proceeding, *In re: Estate of Nelva E. Brunsting*, which is pending under Cause No. 412.249 in Probate Court No. 4, Harris County, Texas (the "Brunsting

[1] In addition to the core probate proceeding, Curtis has previously filed a similar action against her sister, and others, in the Southern District of Texas (Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting, et al.*), which was ultimately remanded to the Probate Court No. 4 upon agreement of the parties. Curtis' brother, Carl, has filed both a malpractice suit in Harris County District Court against his now-deceased parents' estate planning counsel (Cause No. 2013-05455; *Carl Henry Brunsting, et al. v. Candace L. Kunz-Freed, et al.*) and a separate lawsuit against Curtis and the other Brunsting siblings in Harris County Probate Court No. 4 (Cause No. 412.249-401; *Carl Henry Brunsting, et al. v. Anita Kay Brunsting, et al.*). For a more detailed account of the Brunsting siblings' litigation history, Defendant incorporates by reference the factual recitations contained in pages 2-7 of defendants Candace Kunz-Freed and Albert Vacek, Jr.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction [ECF No. 20].

Probate Case"). Curtis is one of five sibling-beneficiaries in the Brunsting Probate Case and Munson is Curtis's domestic partner and paralegal. Defendant Smith is a probate attorney who previously represented one of the other sibling-beneficiaries (*i.e.*, Carole Brunsting) in the Brunsting Probate Case. *See* Complaint ("Compl.") at ¶¶32, 213 & 215. Defendant withdrew as counsel in early 2016.

Apparently dissatisfied with the rulings and administration of Harris County Probate Court Number 4, Plaintiffs have taken out their frustration by suing each Judge (*i.e.*, the Hon. Christine Riddle Butts and Hon. Clarinda Comstock) and lawyer (*i.e.,* Defendant Smith, Candace Kunz-Freed, Albert Vacek, Jr., Bernard Lyle Mathews, III, Neal Spielman, Bradley Featherston, Stephen A. Mendel, Jason Ostrom, Gregory Lester and Jill Willard Young) who has had any contact with the Brunsting Probate Case, as well as certain Probate Court No. 4 administrative personnel (*i.e.*, substitute court reporter Tony Baiamonte). Plaintiffs purport to assert claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1691 *et seq*. ("RICO") premised on 40 alleged "predicate acts" by some or all of this group of probate practitioners, Judges and court personnel, who Plaintiffs caustically describe as the "Harris County Tomb Raiders" or "Probate Mafia."[2/]

Plaintiffs also purport to assert "non-predicate act" claims for civil damages against Defendant Smith (collectively, the "Non-Predicate Act Claims") for (1) "Conspiracy to violate 18 USC §§242 and 2, & 42 U.S.C. §§1983 and 1985," (2) "Aiding and Abetting Breach of Fiduciary, Defalcation and Scienter," (3) "Aiding and Abetting Misapplication of Fiduciary, Defalcation and Scienter," and (4) "Tortious Interference with Inheritance Expectancy." *See* Compl. at ¶¶159-166.

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[2] Plaintiffs allege that the "Harris County Tomb Raiders" or "Probate Mafia" is a "secret society" of probate practitioners, court personnel, probate judges, and other elected officials who are running a "criminal theft enterprise," or "organized criminal consortium," designed to "judicially kidnap and rob the elderly" and other heirs and beneficiaries of their "familial relations and inheritance expectations." *See id*. at ¶¶57, 71, 76.

Plaintiffs' conclusory, conspiracy-theory-laden Complaint is not anchored to any cogently pleaded facts connecting Defendant Smith (or any of the defendants) to any of the myriad federal or state statutory provisions referenced therein. In fact, Plaintiffs' 59 page, 217 paragraph Complaint contains ***only one reference*** to any specific conduct by Defendant Smith – that she filed an objection to a motion for protective order on behalf of Carole Brunsting in the Brunsting Probate Case. *See* Compl. at ¶128. That is it.

The circumstances where an attorney can be liable to a non-client for litigation conduct incident to the execution of her professional duties to a client are extremely limited,[3/] and Plaintiffs have failed to allege any such facts here.

Plaintiffs' Complaint is inherently implausible, and should be dismissed for the following procedural, jurisdictional and substantive reasons:

1. **The Court Should Dismiss Plaintiffs' Claims Pursuant to FED. R. CIV. P. 12(b)(1) for Lack of Subject Matter Jurisdiction –** The Court lacks subject matter jurisdiction over Plaintiffs' claims for the following reasons:

   - Plaintiffs' Claims are Not Ripe – Ripeness is a component of subject matter jurisdiction. *See Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010). Where, as is true here, a plaintiff's claimed injury is contingent upon the occurrence of uncertain future events that may not occur as anticipated (*i.e.*, an unfavorable outcome in a pending probate proceeding), "the claim is not ripe for adjudication." *Id.* at 342.

   - Munson Lacks Article III Standing – Standing is a component of subject matter jurisdiction. *Carr v. Alta Verde Indus.,* 931 F.2d 1055, 1061 (5th Cir. 1991). To establish Article III standing, a plaintiff must establish an "injury-in-fact," which entails "a direct stake in the outcome." *See Sierra Club v. Cedar Point Oil Company, Inc.,* 73 F.3d 546, 555-56 (5th Cir. 1996). Munson is not a beneficiary in the Brunsting Probate Case, has no direct stake in this action and has not suffered an injury-in-fact sufficient to confer Article III standing.

   - Attorney Immunity Bars Plaintiffs' State Law Claims for Civil Damages – Immunity from suit is jurisdictional. *Higgins v. Montgomery Cnty. Hosp. Dist.*, No. H-10-3787,

[3] Under Texas Law, attorneys retain complete immunity from suit for civil liability to non-clients for actions taken in connection with representing a client in litigation. *See Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Troice v. Proskauer Rose, L.L.P.,* 816 F.3d 341, 348 (5th Cir. 2016).

2011 U.S. Dist. LEXIS 81402, at *5 (S.D. Tex. Jul. 26, 2011). Under Texas law, attorneys are immune from suit by non-clients (*i.e.*, the Plaintiffs) for actions taken in connection with representing a client in litigation. *Cantey Hanger, LLP*, 467 S.W.3d at 481. Because Smith is alleged only to have filed an opposition to a motion on behalf of her client in pending state court litigation, she remains immune from Plaintiffs' state law claims for civil damages (*i.e.*, Claims 45, 46 and 47).

2. **Plaintiffs Have Failed to State a Claim Upon Which Relief Can be Granted, and Their Claims Should be Dismissed** – Each of Plaintiffs' claims is implausible and should be dismissed pursuant to FED. R. CIV. P. 12(b)(6) for the following reasons:

- Plaintiffs Lack RICO Statutory Standing – Plaintiffs lack statutory standing to prosecute their civil RICO claims because they have not pled, and cannot establish, (1) a direct, concrete financial injury to the their business or property, and (2) proximate causation (*i.e.*, that the alleged injury was proximately caused by the alleged RICO predicate act(s)). *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir. 1998).

- Plaintiffs Have Failed to Plead Facts Establishing Any of the Substantive Elements of a RICO Violation – Despite its length, Plaintiffs' Complaint consists of nothing more than a formulaic and conclusory recitation of statutory elements couched as factual allegations. *Ferrer v. Chevron Corp.,* 484 F.3d 776, 780 (5th Cir. 2007). Plaintiffs offer no factual support for any of their conclusions, and have failed to plausibly allege any actual (1) conduct or participation (2) of an enterprise (3) through a pattern (4) of racketeering activity. *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 445 (5th Cir. 2000). Plaintiffs' RICO claims therefore should be dismissed. *See Anderson v. United States HUD*, 554 F.3d 525, 528 (5th Cir. 2008) ("a complaint must do more than name laws that may have been violated by the defendant; it must also allege facts regarding what conduct violated those laws.").

- Plaintiffs Have Failed to Plead a Viable Claim Under 42 U.S.C. §1983 ("Section 1983") – Plaintiffs' Section 1983 claim must be dismissed because they fail to identify any Constitutionally-protected rights which have been violated, or plead any facts demonstrating that Defendant is a state actor. *See Cornish v. Carr. Servs. Corp.,* 402 F.3d 545, 549 (5th Cir. 2005).

- Plaintiffs Have Failed to Plead a Viable Claim Under 42 U.S.C. §1985 ("Section 1985") – Plaintiffs' Complaint does nothing more than reference Section 1985 and conclusorily state that it has been violated. Because Plaintiffs have not alleged any facts which would plausibly suggest (1) that they are members of a protected class, (2) that they have been deprived of any Constitutionally-protected rights, (3) that a conspiracy existed, (4) that Defendant engaged in any overt acts in furtherance of the conspiracy, or (5) the existence of any class-based discriminatory animus, their claim should be dismissed. *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 828-29 (1983).

- 18 U.S.C. §242 ("Section 242") Does Not Provide for a Private Right of Action – Section 242 is the criminal analogue to Section 1983 and does not provide for a private right of action. *Johnson v. Kegans*, 870 F.2d 992, 1005 n.4 (5th Cir. 1989).

II.
ARGUMENT AND AUTHORITIES

A. Plaintiffs' Claims Should be Dismissed for Lack of Subject Matter Jurisdiction.

1. Standard of Review.

FED. R. CIV. P. 12(b)(1) governs challenges to a court's subject-matter jurisdiction. "Under Rule 12(b)(1), a claim is properly dismissed for lack of subject-matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the claim." *In re FEMA Trailer Formaldehyde Prods. Liab. Litg.*, 668 F.3d 281, 286 (5th Cir. 2012). Plaintiffs' claims are not justiciable because (1) they are not ripe and, even if they were, (2) Munson lacks Article III standing and (3) Defendant is immune from each of Plaintiff's state law Non-Predicate Act Claims for civil damages.

2. Plaintiffs' Purported Injuries are Speculative, Contingent and Not Ripe.

"Ripeness is a component of subject matter jurisdiction, because a court has no power to decide disputes that are not yet justiciable." *Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010). "A court should dismiss a case for lack of 'ripeness' when the case is abstract or hypothetical," *Monk v. Huston,* 340 F.3d 279, 282 (5th Cir. 2003), or where "further factual development is required." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans,* 833 F.2d 583, 587 (5th Cir. 1987). That is, "if the purported injury is 'contingent [on] future events that may not occur as anticipated, or indeed may not occur at all,' the claim is not ripe for adjudication." *Lopez*, 617 F.3d at 342 (quoting *Thomas v. Union Carbide Agric. Prods. Co.,* 473 U.S. 568, 580–81 (1985)).

Here, Plaintiffs' alleged injuries are contingent upon what they view as the presumptive outcome of pending litigation – the Brunsting Probate Case. *See* Compl. at ¶¶213 (stating that Curtis is being deprived of her "beneficial interests" in the Brunsting Family Trusts), ¶213 (alleging that Munson's efforts to "obtain justice" in the Brunsting Probate Case have been frustrated). But the future outcome of the Brunsting Probate Case is unknown and, because Plaintiffs' purported injuries are "contingent [on] future events that may not occur as [Plaintiffs] anticipate[]," their claims are not ripe and should be dismissed. *See Lopez*, 617 F.3d at 342.

3. Munson Has No Direct Stake in the Outcome of this Case and Lacks Article III Standing.

Standing is a component of subject matter jurisdiction. *See Carr v. Alta Verde Indus.,* 931 F.2d 1055, 1061 (5th Cir. 1991). To establish Article III standing, a plaintiff must demonstrate: (1) an injury in fact, (2) causation, and (3) redressability. *Okpalobi v. Foster,* 244 F.3d 405, 425 (5th Cir. 2001). The requirement of an "injury in fact" is intended to limit access to the courts only to those who "have a direct stake in the outcome." *See Sierra Club v. Cedar Point Oil Company, Inc.,* 73 F.3d 546, 555-56 (5th Cir. 1996).

The general theory underlying the Complaint is that Defendant (and the rest of the "Probate Mafia") have engaged in conduct which has frustrated the direction and outcome of the Brunsting Probate Case. *See generally* Complaint. But Munson is not a beneficiary in the Brunsting Probate Case and admittedly lacks any tangible interest in the outcome of those proceedings. *See* ECF No. 33 at ¶69 ("One thing [the parties] appear to agree on is that Munson is not a party to any of the prior lawsuits, nor is he a beneficiary of the Brunsting Family of Trusts."). Munson's only connection to any of the conclusory events in the Complaint is that he purportedly provided "paralegal" services to Curtis in connection with other pending litigation. Munson's

disappointment or frustration with the status, or results, of litigation in which he provided paralegal services is not a concrete injury in fact, and he lacks Article III standing.

4. Plaintiffs' State Law Non-Predicate Act Claims are Barred by Attorney Immunity.

"Immunity from suit is jurisdictional and, therefore, is properly decided pursuant to a Rule 12(b)(1)." *Higgins v. Montgomery Cnty. Hosp. Dist.*, No. H-10-3787, 2011 U.S. Dist. LEXIS 81402, at *5 (S.D. Tex. Jul. 26, 2011). Under Texas law, "attorneys are immune from civil liability to non-clients for actions taken in connection with representing a client in litigation." *Cantey Hanger, LLP*, 467 S.W.3d at 481 (internal quotations omitted). "Even conduct that is 'wrongful in the context of the underlying suit' is not actionable if it is 'part of the discharge of the lawyer's duties in representing his or her client.'" *Id*. (quoting *Toles v. Toles*, 113 S.W.3d 899, 910-11 (Tex. App.—Dallas 2003, no pet.)).

Attorney immunity is not merely a defense to liability. *See Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 346-48 (5th Cir. 2016). Rather, "attorney immunity is properly characterized as a true immunity from suit[.]" *Id*. This is true even where a plaintiff labels an attorney's conduct as "fraudulent." *See Byrd*, 467 W.W.3d at 483. The only exceptions to an attorney's immunity from suit are if the attorney has engaged in conduct that is "entirely foreign to the duties of an attorney," or if the conduct "does not involve the provision of legal services . . . ." *See id.* at 482.

Here, Plaintiffs' Complaint contains only one reference to any specific conduct by Defendant Smith – that she filed an opposition to a motion for protective order on behalf of her client in the Brunsting Probate Case. *See* Compl. at ¶128. Put differently, Plaintiffs allege only that Defendant was actively discharging her duties to her client in the context of active litigation. Defendant therefore remains immune from the non-client Plaintiffs' claims for civil liability with respect to any claims arising under Texas law. For this reason, the Court lacks subject matter

jurisdiction over Plaintiffs' Non-Predicate Act Claims 45, 46 and 47, and those claims should be dismissed.

B. Plaintiffs' Claims Should be Dismissed for Failure to State a Claim Upon Which Relief May be Granted.

1. Standard of Review.

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the formal sufficiency of the pleadings and is "appropriate when a defendant attacks the complaint because it fails to state a legally cognizable claim." *Ramming v. United States,* 281 F.3d 158, 161 (5th Cir. 2001). The court must accept the factual allegations of the complaint as true, view them in a light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff's favor, *id.*, but need "not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Ferrer v. Chevron Corp.,* 484 F.3d 776, 780 (5th Cir. 2007) (internal citations omitted).

To avoid dismissal a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Plausibility requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). As framed by the Fifth Circuit, "a complaint must do more than name laws that may have been violated by the defendant; it must also allege facts regarding what conduct violated those laws." *See Anderson v. United States HUD*, 554 F.3d 525, 528 (5th Cir. 2008). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal,* 556 U.S. at 678. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly,* 550 U.S. at 570) (internal quotation marks omitted). "[D]ismissal

is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief." *Torch Liquidating Trust ex rel. Bridge Assocs. L.L.C. v. Stockstill,* 561 F.3d 377, 384 (5th Cir. 2009) (internal quotation marks and citation omitted).

2. Plaintiffs Lack Statutory Standing Under RICO.

The standing provision of civil RICO provides that "***any person injured*** in his business or property ***by reason of*** a violation of section 1962 of this chapter may sue therefor . . . and shall recover threefold the damages he sustains." See 18 U.S.C. 1964(c) (emphasis added). To establish statutory standing, a RICO plaintiff must therefore establish both (1) an injury (2) that was proximately caused by a RICO violation (*i.e.*, predicate act(s)). *See Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 606 (5th Cir. 1998); *Sedima, S.P. R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985) ("[a] plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation.").

a. Plaintiffs Lack a Direct, Concrete Injury-in-Fact.

To satisfy the requirements for RICO statutory standing, a plaintiff's injury must be "conclusive" and cannot be "speculative." *Gil Ramirez Grp., L.L.C. v. Houston Indep. Sch. Dist.*, 786 F.3d 400, 409 (5th Cir. 2015). "Injury to mere expectancy interests or to an 'intangible property interest' is not sufficient to confer RICO standing." *See id*. (quoting *Pinnacle Brands*, 138 F.3d at 607).

Here, the face of the Complaint shows that Curtis has not alleged any direct, concrete financial injury to her business or property. Indeed, the Complaint identifies only "***threats*** of injury," and repeatedly and consistently characterizes Curtis' supposed "injury" in terms of her "inheritance ***expectancy***." *See, e.g.*, Compl. at ¶¶165-66, 213. Put differently, Curtis complains only that the "Probate Mafia's" alleged conduct has interfered with, or threatened, her future anticipated ***expectancy interests*** in the Brunsting Probate Case. A clearer example of a speculative

non-RICO injury is unimaginable. *See Gil Ramirez Grp., L.L.C.,* 786 F.3d at 409 ("Injury to mere ***expectancy interests*** . . . is not sufficient to confer RICO standing.")(emphasis added); *Firestone v. Galbreath*, 976 F.2d 279, 282 (6th Cir. 1992) (estate beneficiaries lacked standing under RICO because the alleged direct harm was to the estate, which flowed only indirectly to the beneficiaries).

And Munson's purported "injury" is even more attenuated, because he lacks any expectancy interest in the Brunsting Probate Case. *See* ECF No. 33 at ¶69. Munson's only claimed connection to this matter is that he purportedly provided paralegal services to Ms. Curtis over the past several years, and is dissatisfied with the results of the cases on which he worked. *See* Compl. at ¶215. This is not a concrete injury in fact under any calculus.

Because Plaintiffs have failed to plead facts plausibly showing that they incurred an injury sufficient to meet the RICO standing requirements, the Court can and should dismiss all claims against Defendant Smith.

b. Defendant Smith did not Proximately Cause Any of Plaintiffs' "Injuries."

To adequately plead standing, Plaintiffs must also establish that Defendant's "predicate acts"—here, Smith's alleged violations of 18 U.S.C. §§ 1512 and 1519[4/] – "constitute both a factual and proximate cause of the plaintiff's alleged injury." *Whalen v. Carter*, 954 F.2d 1087, 1091 (5th Cir. 1992). This requires Plaintiffs to show the "***directness*** of the relationship between the conduct and the harm." *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010)(emphasis added) (internal citations omitted). Where the "link" between the alleged injury and predicate acts "is too remote, purely contingent, or indirect," the RICO claim should be dismissed. *Id.*

18 U.S.C. §§ 1512(c) provides:

[4] Plaintiffs have identified 45 separate "predicate acts" in the Complaint but only 2 (Claims 20 and 21) appear to be directed at Defendant.

> (c) Whoever corruptly –
>
> (1) alters, destroys, mutilates, or conceals a record, document or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or
> (2) Otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned for not more than 20 years, or both.

18 U.S.C. §§ 1519 in turn states:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

Here, Plaintiffs' Complaint contains no factual allegations which could plausibly demonstrate that Smith has violated either federal statute. The only "fact" involving any conduct by Smith is that she opposed a motion for protective order in pending litigation. *See* Compl. at ¶128. But this is the type of routine advocacy that an attorney is permitted – and indeed obligated – to engage in when representing a client in litigation, and cannot rise to the level of a predicate act under RICO. *See, e.g.*, *St. Gernain v. Howard*, 556 F.3d 261, 262 (5th Cir. 2009) (attorney's alleged violation of Rules of Professional Conduct in prior litigation is insufficient to implicate RICO). Because Plaintiffs have pleaded no facts plausibly demonstrating that Smith engaged in any predicate act, they have not, and cannot, adequately plead proximate causation and lack statutory RICO standing for this additional reason.

3. <u>Plaintiffs Have Failed to Plead the Substantive Elements of a Civil RICO Claim.</u>

Even if Plaintiffs had statutory standing to sue under RICO, which they clearly do not, their claims must still be dismissed because they have pleaded no facts plausibly supporting the substantive elements of their claim. Based only on Defendant Smith's filing of an opposition to a

motion for protective order in pending state court probate litigation, Plaintiffs have alleged violations of RICO sections 1962(c) and (d). These subsections state:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
>
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection . . . (c) of this section.

18 U.S.C. §§ 1962(c), (d).

To plead a violation of 20 U.S.C. §§ 1962(c) or (d), Plaintiffs must demonstrate: (1) conduct or participation (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima*, 473 U.S. at 496; *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425, 445 (5th Cir. 2000). Plaintiffs have not done so here.

a. Plaintiffs Have Not Alleged the Existence of an "Enterprise."

To state a claim under RICO, a plaintiff must first allege the existence of an "enterprise," which RICO defines as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." *See* 18 U.S.C. § 1961(4). As the definition suggests, an enterprise can be either a legal entity or association-in-fact. *See St. Paul Mercury Ins. Co.*, 224 F.3d at 445. Plaintiffs' Complaint does not plausibly allege the existence of either.

(i) "Probate Court No. 4" is Not a Legal Entity.

Plaintiffs first allege that "Probate Court No. 4" is a legal entity enterprise within the meaning of 18 U.S.C. § 1961(4). *See* Compl. at ¶36. But, as is true with the entire Complaint, Plaintiffs fail to plead facts supporting this conclusory assertion. And it is well-established that a county government department (*i.e.*, a county probate court) is not a legal entity that can sue or be sued separate and apart from the county itself. *See* TEX. LOC. GOV'T CODE § 71.001 ("A county

is a corporate and political body."); s*ee Darby v. City of Pasadena,* 939 F.2d 311, 313 (5th Cir. 1991); *Crull v. City of New Braunfels, Texas*, 267 F. App'x. 338, 341-42 (5th Cir. 2008). Because Plaintiffs' assertion of a legal entity enterprise has no basis in law or fact, dismissal is appropriate.

(ii) Plaintiffs Have Not Alleged an Association-in-Fact Enterprise.

What Plaintiffs appear to be claiming is that the various individual judges, lawyers and court personnel whom they have sued (*i.e.*, the "Harris County Tomb Raiders" or "Probate Mafia") operate as an "association-in-fact" enterprise. *See* Compl. at ¶¶54-58. But this conspiracy-theory allegation is pure conjecture, and Plaintiffs again allege no facts which plausibly demonstrate the existence of the ominous "secret society" about which they complain. *See id*. at ¶58 (referencing "regular participants in this secret society.").

When the alleged enterprise is an association-in-fact enterprise, the plaintiff must show evidence of: (1) an existence separate and apart from the pattern of racketeering; (2) ongoing organization; and (3) members that function as a continuing unit as shown by a hierarchical or consensual, decision-making structure. *See Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241, 243 (5th Cir. 1988); *Boyle v. United States*, 556 U.S. 938, 943-45 (2009).

Again, Plaintiffs' have alleged ***no facts*** which, if true, would satisfy any of these three requirements. Plaintiffs do not allege that the "Probate Mafia" maintains any existence separate and apart from what Plaintiffs have alleged to be a pattern of racketeering. They likewise do not allege that the "Probate Mafia" is an ongoing organization or that the various alleged members operate or function as a continuing unit. Simply put, Plaintiffs have again parroted legal conclusions but failed to support them with any concretely pleaded facts. *Anderson v. United States HUD*, 554 F.3d 525, 528 (5th Cir. 2008). For this reason, Plaintiffs have not plausibly pled the existence of an association-in-fact enterprise.

b. Plaintiffs Have Not Alleged a "Pattern" of Racketeering Activity.

"A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity." *St. Germain*, 556 F.3d at 263; *H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 239 (1989). To adequately allege a "pattern," Plaintiffs must plead both that the acts are related to each other, and that those acts either constitute or threaten long-term criminal activity – thereby reflecting "continuity." *See H.J. Inc.*, 492 U.S. at 239.

Here, Plaintiffs' Complaint conclusorily states in several instances that the Defendants have engaged in a "pattern of racketeering," but fails to set forth any facts demonstrating such a pattern. The Complaint includes no facts demonstrating how the various alleged predicate acts are germane, or that they constitute or threaten long-term criminal activity. *See, e.g.*, *Allstate Ins. Co. v. Donovan*, No. H-12-0432, 2012 U.S. Dist. LEXIS 92401, at *13 (S.D. Tex. 2012). Plaintiffs' Complaint consists of nothing more than scatter-shot references to myriad "predicate act" statutes identified in RICO, followed by repetitive and conclusory assertions that one or more of the Defendants have purportedly violated these statutes "for the purpose of executing or attempting to execute a scheme and artifice to default and deprive . . . ." *See, e.g.*, Compl. at ¶¶121-123, 125. Because Plaintiffs have alleged no facts which would plausibly demonstrate a single predicate act, let alone the required "pattern" of such acts, dismissal is appropriate.

c. Plaintiffs Have Not Plausibly Alleged a Conspiracy Under § 1692(d).

A claim under § 1962(d) is necessarily predicated upon a properly pleaded claim under subsections (a), (b), or (c). Because Plaintiffs have failed to adequately plead violations of those other subsections, the § 1962(d) conspiracy allegation fails to state a claim. *Nolen v. Nucentrix Broadband Neflvorks,* 293 F.3d 926, 930 (5th Cir. 2002) (affirming dismissal of § 1962(d) claim where plaintiff did not adequately plead § 1962(a) and (c) claims). Additionally, Plaintiffs'

conspiracy allegations are conclusory and lack supporting factual details. *See Lovick v. Ritemoney Ltd,* 378 F.3d 433, 437 (5th Cir. 2004) (holding that courts need not rely on "conclusional allegations or legal conclusions disguised as factual allegations" in considering a motion to dismiss). Plaintiffs' bald insistence that Defendant Smith (or any of the defendants) conspired to participate in a criminal enterprise does not make it so, and is insufficient to support a RICO claim.

4. Plaintiffs' Non-Predicate Act Claims Alleging Violations of Sections 1983, 1985 and 242 Should All be Dismissed.

In addition to their RICO claim, Plaintiffs have also asserted four "non-predicate act" claims[5/] against Defendant for civil damages. The first such claim (Claim 44) alleges violations of Sections 1983, 1985 and 242. *See* Compl. at ¶159. Each of these claims is without merit, and is addressed in turn below.

a. Plaintiffs' Section 1983 Claim Should be Dismissed.

Section 1983 "provides a federal cause of action for the deprivation, under the color of law, of a citizen's 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Livadas v. Bradshaw,* 512 U.S. 107, 132 (1994). To state a claim under Section 1983, a plaintiff must allege facts that show that he has been deprived of a right secured by the Constitution and laws of the United States and that the deprivation occurred under color of state law. *See Flagg Bros, Inc. v. Brooks,* 436 U.S. 149, 155 (1978); *Cornish v. Carr. Servs. Corp.,* 402 F.3d 545, 549 (5th Cir. 2005).

[5] This section addresses only those causes of action listed under the "Non-Predicate Act Civil Claims for Damages." While none of these claims specifically mention Smith, in an abundance of caution, she responds to each such claim that globally references the "Defendants." To the extent Plaintiffs also seek individual liability against Smith based on their predicate act claims under 18 U.S.C. §§ 1512 and 1519 (*see* Claims 20 and 21), neither criminal statute creates a private right of action and those claims also should be dismissed. *See Gipson v. Callahan*, MO-97-CA-160, 1997 U.S. Dist. LEXIS 23139, at *17 (W.D. Tex. 1997) (no private right of action under § 1512); *Peavey v. Holder*, 657 F. Supp. 2d 180, 191 (D.D.C. 2009) (no private right of action under § 1519).

(i) Plaintiffs Do Not Identify Any Particular Constitutionally-Protected Rights.

Plaintiffs' Section 1983 claim should be dismissed in the first instance because they have not even identified in the Complaint any particular Constitutionally-protected rights that have allegedly been violated. *See Graham v. Connor,* 490, U.S. 386, 394 (1989). True to form, Plaintiffs have instead vaguely and generally stated only that they have been deprived of unspecified "rights, privileges, and immunities secured and protected by the Constitution . . ." and leave it to the Court and the Defendant to speculate as to which one(s). *See* Compl. at ¶159. For this reason alone, Plaintiffs Section 1983 claims should be dismissed.

(ii) Plaintiffs Have Not Alleged State Action.

The requirement that a deprivation occur under color of state law is also known as the "state action" requirement – and Plaintiffs cannot meet it here. *See Bass v. Parlnvood Hasp.,* 180 F.3d 234, 241 (5th Cir. 1999). Smith is a private individual, and Plaintiffs have not alleged otherwise. A private party such as Smith will be considered a state actor for Section 1983 purposes only in rare circumstances. *See Gordon v. Neugebauer,* 57 F.Supp.3d 766, 773 (N.D. Tex. 2014). First, the plaintiff can show that the private actor was implementing an official government policy. *See Rundus v. City of Dallas, Tex.,* 634 F.3d 309, 312 (5th Cir. 2011). Plaintiffs have not identified any official government policy that caused an alleged deprivation of their civil rights, and the first narrow exception is therefore inapplicable here.

Alternatively, a plaintiff can show that a private entity's actions are fairly attributable to the government. *Id*. This is also known as the "attribution test." The Supreme Court has articulated a two-part inquiry for determining whether a private party's actions are fairly attributable to the government: (1) "the deprivation [of plaintiffs constitutional rights] must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a

person for whom the State is responsible" and (2) "the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 937 (1982); *see also Bass,* 180 F.3d at 241.

The Supreme Court utilizes three different tests for determining whether the conduct of a private actor can be fairly attributable to a state actor under the second prong of the attribution test: (1) the nexus or joint-action test, (2) the public function test, and (3) the state coercion or encouragement test. *See Richard v. Hoechst Celanese Chern. Grp., Inc.,* 355 F.3d 345, 352 (5th Cir. 2003); *Lewis v. Law-Yone,* 813 F.Supp. 1247, 1254 (N.D. Tex. 1993) (describing the three tests as applicable to the resolution of the second prong of the attribution test articulated by the Supreme Court in *Lugar*).

Under the "nexus test," a private party may be considered a state actor "where the government has 'so far insinuated itself into a position of interdependence with the [private actor] that it was a joint participant in the enterprise,'" and the actions of the private party can be treated as that of the state itself. *Bass,* 180 F.3d at 242; *see also Blum v. Yaretsky,* 457 U.S. 991, 1004 (1982). Plaintiffs have pled no facts which would suggest that any state governmental entity has "insinuated itself into a position of interdependence" with Defendant Smith. Indeed, Plaintiffs fail to plead any facts which would show that Smith ever interacted or communicated with the any state governmental entity regarding the filing of an opposition to a motion for protective order on behalf of her client. Plaintiffs therefore have failed to plead facts that would satisfy the nexus test for state action under Section 1983.

Under the "public function test," a "private entity may be deemed a state actor when that entity performs a function which is traditionally the exclusive province of the state." *Bass,* 180 F.3d at 241-42. Here, Plaintiffs' Complaint is devoid of any facts showing that the representation

of beneficiaries in probate litigation is a function that traditionally is the exclusive province of the state, and Plaintiffs therefore have failed to plead facts that would satisfy the public function test for state action under Section 1983.

Under the "state coercion test," "a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." *Bass,* 180 F.3d at 242. State coercion or compulsion can be found where the plaintiff establishes that the private defendants were engaged in a conspiracy with state officials. *See Tebo v. Tebo,* 550 F.3d 492, 496 (5th Cir. 2008).

To establish such a conspiracy, the plaintiff must show that the private and public actors entered into an agreement to commit an illegal act. *Id.* At the motion to dismiss stage, the plaintiff must "allege specific facts to show an agreement." *See id.* (quoting *Priester v. Lowndes Cnty.,* 354 F.3d 414, 421 (5th Cir. 2004)). Here, Plaintiffs have not included any facts in their Complaint which would suggest that Defendant Smith entered into any agreement with, or was acting at the behest of, any government official when she prepared an opposition to a motion for protective order on behalf of her client. There are simply no facts pleaded which would, if true, show the existence of such an agreement. Plaintiffs thus have failed to plead facts showing that Defendant Smith was coerced or encouraged by any governmental entity sufficient to satisfy the state coercion test. *Priester,* 354 F.3d at 420 (conspiracy alleges that are "merely conclusory, without reference to specific facts," will not survive a motion to dismiss).

Because Plaintiffs have failed to establish the necessary state action, their Section 1983 claim should be dismissed.

b. Plaintiffs' Section 1985 Claim Should be Dismissed.

To state a §1985 claim, a plaintiff must plead: (1) a conspiracy involving two or more persons, (2) to deprive, directly or indirectly, a person or class of persons of equal protection of the laws, (3) that one or more of the conspirators committed an act in furtherance of that conspiracy (4) which causes injury to another in his person or property or a deprivation of any right or privilege he has as a citizen of the United States, and (5) the conspirators' action is motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 828-29 (1983); *Wong v. Stripling,* 881 F.2d 200, 202 (5th Cir. 1989). Plaintiffs' §1985 claim fails for several reasons.

Plaintiffs have not alleged any facts to support any of these elements. Plaintiffs identify no specific "right of privilege" that has been deprived. *See* Compl. at ¶159 (generally and vaguely alleging the deprivation of "rights, privileges, and immunities secured and protected by the Constitution and laws of the United States."). Plaintiffs likewise fail to plead with particularity a conspiracy or any overt acts. *Compare Taylor v. Fed. Home Loan Bank Bd.*, 661 F. Supp. 1341, 1346 (N.D. Tex. 1986) (plaintiff must plead existence of conspiracy and overt acts with particularity), *with* Compl. at ¶129 ("Defendants . . . did willfully and knowingly conspire together to participate, and did participate, in a scheme or artifice . . . ."). Finally, the Complaint is devoid of any factual allegations demonstrating that Plaintiffs are members of a protected class, or that any of the alleged "conspiracy" and "overt acts" were modified by class-based discriminatory animus. Simply put, Plaintiffs have once again conclusively alleged a violation of the law, without stating the basis for the alleged violation. *See Anderson*, 554 F.3d at 528 ("a complaint must do more than name laws that may have been violated by the defendant; it must also allege facts regarding what conduct violated those laws.").

For these reasons, Plaintiffs' Section 1985 claim should be dismissed.

c. Section 242 Does Not Provide for a Private Right of Action.

Section 242 is the criminal analogue to Section 1983 and does not provide for a private right of action. *Johnson v. Kegans*, 870 F.2d 992, 1005 n.4 (5th Cir. 1989). Plaintiffs' claim that Defendant has conspired to violate Section 242 therefore should be dismissed without further inquiry.

5. Plaintiffs' Remaining Non-Predicate Act Claims (Claims 45, 46 and 47) are all Barred by Attorney Immunity.

Plaintiffs' remaining Non-Predicate Act Claims, which allege "aiding and abetting breach of fiduciary duty," "aiding and abetting misapplication of fiduciary" and "tortious interference with inheritance expectancy," all arise under Texas law and, for the reasons more fully stated in Section II(A)(4) of this Motion, are barred by attorney immunity. *See* Compl. at ¶¶160-66.

III.
CONCLUSION

Accordingly, Defendant respectfully requests that the Court grant her Motion to Dismiss and dismiss Plaintiffs' claims with prejudice, and for such other and further relief, at law or in equity, to which Defendant may show herself to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2016, a true and correct copy of the foregoing and/or attached instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure through the Southern District of Texas CM/ECF E-File System and as indicated below:

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

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON, *Plaintiffs*, vs. CANDACE KUNZ-FREED, ET AL., *Defendants*.	§ § § § § § § § § §	Civil Action No. 4:16-cv-01969

ORDER

The Court, having considered Defendant Charlene Payne Smith's (the "Defendant") Motion to Dismiss the Verified Complaint for Damages of Plaintiffs Candace Louise Curtis ("Curtis") and Rik Wayne Munson ("Munson") (collectively, the "Plaintiffs") pursuant to FED. R. CIV. P. 12(b)(1) and (6) (the "Motion"), the response, if any, and arguments of counsel, if any, is of the opinion that the Motion should be, in all things, GRANTED.

It is therefore ORDERED that all claims asserted by Plaintiffs, and against Defendant, are hereby DISMISSED WITH PREJUDICE.

It is so ORDERED.

Date

The Honorable Alfred H. Bennett
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFF'S ANSWER TO DEFENDANT JASON OSTROM'S FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) MOTION TO DISMISS

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I. Nature and Stage of the Proceedings

1. Plaintiffs brought the above titled action pursuant to 18 U.S.C. §1964(c) alleging Racketeer Influenced Corrupt Organization Act violations of 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d), both individually and as private attorneys general on behalf of the public trust, on July 5, 2016 in the Southern District of Texas.

2. On October 31, 2016, Defendant Jason Ostrom filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt 78).

II. Contextual Summary

3. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas.

4. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl Brunsting, Carole Brunsting, and Defendants Amy Brunsting and Anita Brunsting. (Dkt 33-1, 33-2 and 33-3)

5. Neither Plaintiff Curtis nor any of her siblings is an heir to, and none has inheritance expectancy, from the "Brunsting Estates" (Dkt 41-3 and 41-4)[1].

III. History of "The Trust"

6. In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for their remaindermen grandchildren and great grandchildren. (Dkt 34-1)

7. The Brunstings restated their Trust in 2005 (Dkt 33-2) removing Anita Brunsting as successor trustee and appointing Carl and Amy Brunsting as successor co-trustees, and naming Candace Curtis as alternate.

8. The Brunstings amended their restatement in 2007 (Dkt 33-3), to remove Amy Brunsting as a successor co-trustee, appointing Candace in her place, and naming Frost Bank as the alternate. It would appear from this sequence of events that Elmer and Nelva sought to prevent what has since occurred.

9. Elmer Brunsting was declared incompetent in June 2008 and on July 1, 2008 the first illicit successor trustee appointment to the Brunsting Trust was apparently drafted and notarized by Candace Kunz-Freed, claiming a change in jointly selected successor trustees had been made by Nelva Brunsting alone. (Exhibit 1) That instrument portends to have placed Anita Brunsting back in a trustee position.

10. Elmer Brunsting passed on April 1, 2009. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and its assets were divided between an irrevocable decedent's trust and a revocable survivor's trust (Dkt 34-2 Articles III & VII).

[1] See *Curtis v Brunsting* 704 F.3d 406 regarding the Brunsting inter vivos Trusts

11. First named successor co-trustee Carl Brunsting fell ill with encephalitis on or about July 3, 2010 and by August 25, 2010 the extortion instrument[2] had been drafted and notarized by Candace Freed, naming Anita and Amy Brunsting successor co-trustees.

IV. A History of the Litigation

12. Candace Curtis v Anita and Amy Brunsting is a breach of fiduciary action seeking accounting and disclosures, filed in the Southern District of Texas on February 27, 2012, (Exhibit 2) and was dismissed under the Probate exception to federal diversity jurisdiction March 8, 2012. Plaintiff Curtis filed a timely notice of appeal.

13. On March 9, 2012 Defendant Bobbie Bayless filed a Petition to take depositions before suit in the Harris County District Court styled, "In Re: Carl Henry Brunsting. (Exhibit 3)

14. On January 9, 2013 the Fifth Circuit issued a unanimous opinion with Order for Reverse and Remand published *Curtis v Brunsting 704 F.3d 406* (Dkt 34-4).

15. On January 29, 2013 Defendant Bobbie Bayless filed a suit in the Harris County District Court against Defendants Vacek & Freed, in the name of the "Estate of Nelva Brunsting" raising only trust related issues. (Dkt 34-5)

16. In late 2013 Plaintiff Curtis enlisted the assistance of Houston Attorney Jason Ostrom.

17. Immediately upon appearing as Plaintiff Curtis' representative in the federal lawsuit, Curtis v Brunsting 4:12-cv-592, Defendant Jason Ostrom arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis' lawsuit with that of her brother Plaintiff Carl Brunsting, (Dkt 26-1) allegedly to afford complete relief to the parties.

18. It should be noted that Ostrom amended Curtis' federal complaint to add Carl Henry Brunsting as an "Involuntary Plaintiff", in order to pollute diversity so he could perfect a remand

[2] The alleged August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment Under Living Trust Agreement" a.k.a. 8/25/2010 QBD.

to state court to consolidate the first filed Plaintiff, Candace Curtis, with later filed state court Plaintiff Carl Brunsting, where federal plaintiff Curtis was named a Defendant only. (Dkt 34-7) (see also Dkt 57-1 and 57-2)

19. Defendant Ostrom thereafter abandoned "Plaintiff Curtis" and "Curtis v Brunsting" in the probate court record, pleading only under the heading of "Estate of Nelva Brunsting" (Exhibits 4 and 5 attached).

V. Statement of the Issues

1. Plaintiffs have not adequately pleaded the necessary predicate acts;
2. The plaintiffs have not stated a RICO claim under section 1962(c);
3. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b);
4. Plaintiffs have failed to plead reliance in connection with their fraud related claims;
5. Plaintiffs failed to plead a cognizable RICO enterprise;
6. Plaintiffs enterprise allegations are too vague and conclusory
7. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

VI. The Argument

20. The RICO complaint articulates, with specificity, more than 40 events, each of which is listed as a RICO predicate act at 18 U.S.C. §1961(1) and each Defendant is accused of in-concert aiding and abetting. It is unnecessary for Plaintiffs to plead that each defendant personally committed two or more predicate acts.

> *To be convicted of conspiracy to violate RICO under § 1962(d), the conspirator need not himself have committed or agreed to commit the two or more predicate acts, such as bribery, requisite for a substantive RICO offense under § 1962(c). Section 1962(d)-which forbids "any person to conspire to violate" § 1962(c)-is even more comprehensive than the general conspiracy provision applicable to federal crimes, § 371, since it contains no requirement of an overt or specific act to effect the conspiracy's object. Presuming Congress intended the "to conspire" phrase to have its ordinary meaning under the criminal law, see Morissette v. United States, 342 U. S. 246, 263, well-established principles and contemporary understanding demonstrate that, although a conspirator must intend to further an*

> *endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, it suffices that he adopt the goal of furthering or facilitating the criminal endeavor, and he need not agree to undertake all of the acts necessary for the crime's completion. Salinas' contrary interpretation of § 1962(c) violates the foregoing principles and is refuted by Bannon v. United States, 156 U. S. 464, 469. Its acceptance, moreover, is not required by the rule of lenity, see United States v. Shabani, 513 U. S. 10, 17. Even if Salinas did not accept or agree to accept two bribes, there was ample evidence that the sheriff committed at least two predicate acts when he accepted numerous bribes and that Salinas knew about and agreed to facilitate the scheme, and this is sufficient to support Salinas' conviction under § 1962(d). Pp. 61-66. United States v Salinas 654 F.2d 319*

21. It is also only necessary to show the defendant associated with the criminal venture, purposefully participated in the criminal activity, and sought by his actions to make the venture successful. *United States v. Landerman*, 109 F.3d 1053, 1068 n.22 (5th Cir. 1997). Jason Ostrom's conduct inarguably meets and exceeds this criterion.

22. A defendant associates with a criminal venture if he shares in the criminal intent of the principal, and the defendant participates in criminal activity if he has acted in some affirmative manner designed to aid the venture. *Landerman*, 109 F.3d at 1068 n.22. The level of participation may be of relatively slight moment. *Leos-Quijada*, 107 F.3d at 794. Also, it does not take much evidence to satisfy the facilitation element once the defendant's knowledge of the unlawful purpose is established. *United States v. Bennett*, 75 F.3d 40, 45 (1st Cir. 1996).[3]

23. Jason Ostrom's overt acts clearly intended to convert the Brunsting trusts into assets of a probate estate by masquerading Curtis v Brunsting behind an "estate" label.

VII. Res Judicata and Collateral Estoppel

1. <u>The Brunsting Trusts are not a Probate Matter</u>

24. The Brunsting Trusts are not assets belonging to the Estates of Elmer or Nelva Brunsting and are not subject to probate administration.

[3] US Attorneys' Criminal Resource Manual CRM 2474

25. That finding of fact and conclusion of law was settled by the Justices of the Fifth Circuit Court of Appeals[4] when Plaintiff Curtis' original petition survived the probate exception to federal diversity jurisdiction.

26. Moreover, the "Estate" inventory (Dkt 41-7) approved March 27, 2013, contains only an old car and the claims pending against Vacek and Freed in the Harris County District Court and was followed immediately by two drop orders. (Dkt 41-5 and 6).

27. The Fifth Circuit Court of Appeals on review held that Curtis v Brunsting was a matter relating only to an inter vivos trust not in the custody of a state court, that the assets in the inter vivos trust were not assets belonging to any "Estate" and were not subject to probate administration. (Dkt 34-4)

28. Defendant Ostrom, (Dkt 78) like Defendants Vacek & Freed (Dkt 19 and 20), Bobbie Bayless (Dkt 23), Jill Willard Young (Dkts 25, 38), Anita Brunsting (Dkt 30) Amy Brunsting (Dkt 35), Steven Mendel/Bradley Featherston (Dkt 36), Neal Spielman (Dkt 39 and 40), Christine Riddle Butts, Clarinda Comstock and Tony Baiamonte (Dkt 53), claim the Racketeer Influenced Corrupt Organization Act action before this Honorable Court arises from a "Probate Case" or "Probate Matter". However, the so called "Probate Matter" does not speak to anything but the Brunsting Trusts.

29. The Fifth Circuit found that Plaintiff Curtis' federal lawsuit was exclusively related to the Brunsting inter vivos Trusts, that those trusts were not in the custody of any state court, that trust assets were not property of any estate and that even though the wills had been since filed and there was an ongoing probate of the estate, the assets in an inter vivos trust are not property

[4] Curtis v. Brunsting 704 F.3d 406

belonging to an estate and would not be subject to probate administration. Jason Ostrom's remand to state court did not change that.

30. The Circuit Court also noted that the only heir to the Estates of Elmer and Nelva Brunsting was the Brunsting Trust.

31. The Circuit Court also reiterated the long standing doctrine of custodia legis, citing to the United States Supreme Court in Marshall v. Marshall[5] for the proposition that no court can assume in rem jurisdiction over a res in the custody of another court. (Dkt 34-4)

32. Two actions were filed in state courts subsequent to Curtis reverse and remand back to the federal Court. Both state court suits were brought in the name of the "Estate of Elmer and Nelva Brunsting" and both suits raised only claims relating to the Brunsting trusts, then in the custody of a federal Court.

33. Federal Plaintiff Curtis is not an heir to any estate and neither are the other trust beneficiaries. The trust is the only heir to any estate and alleged trespass against the trust is against the named beneficiaries, not against any estate. Plaintiff Curtis is a real party in interest in the Brunsting Trusts, but not in any estate.

34. Defendant Ostrom admits to causing the case of Curtis v Brunsting 5:12-cv-592 to be remanded to Harris County Probate Court. However, Mr. Ostrom characterizes the remand as *"remanding the case **back** to Harris County Probate Number 4"*, (Dkt 78 Page 4 of 24 unnumbered paragraph 7), as if to imply Plaintiff Curtis was some kind of escapee being returned to the custody of Harris County Probate Number 4, when Plaintiff Curtis had never been to Harris County Probate Court and had no claims pending there.

[5] 547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006).

35. Plaintiff Curtis retained Defendant Jason Ostrom in the federal court matter under the letterhead of Ostrom/Sain. After effecting a remand to state probate court Ostrom pled exclusively under the heading "Estate of Nelva Brunsting", which Plaintiff Curtis' lawsuit is not.

VIII. Sufficiency of the Pleadings

36. Defendant Ostrom claims Plaintiffs fail to plead a cognizable RICO claim, enterprise, fraud based acts, reliance or proximate cause.

37. Such assertions can only be ground upon an unfamiliar view of the law, as surely Defendant cannot honestly plead ignorance of his acts or the facts when his proclaimed station requires him to be knowledgeable of the records and pleadings in the cases he claims to be an attorney in.

38. Plaintiffs more than adequately plead Harris County Probate Court as both the RICO enterprise and a victim of the racketeering activity.

39. In *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001), the Supreme Court stated:

> *The Court has held that RICO both protects a legitimate "enterprise" from those who would use unlawful acts to* ***victimize*** *it, United States v. Turkette, 452 U.S. 576, 591 (1981), and also protects the public from those who would unlawfully use an "enterprise" (whether legitimate or illegitimate) as a "vehicle" through which "unlawful . . . activity is committed," National Organization for Women, Inc., 510 U.S. [249,] 259 (1994).*

40. Plaintiffs plead cognizable predicate acts with the necessary particularity and Plaintiffs plead acts demonstrative of conspiracy and of aiding and abetting with more particularity in each reply to motions to dismiss.

41. This Probate Bully Mob of RICO Defendants fully intended to trap the Brunsting siblings in a cycle of vacuous paper exchanges to maximize attorney billing profits while resolving

absolutely nothing on the public record, in order to protect the racketeering activity from discovery and investigation by legitimate law enforcement resources.

42. Each of the "RICO Defendants" aided and abetted the conspiracy in violation of 18 U.S.C. §§2 and 1962(d) and now come before this Honorable Court claiming their attempt to bust the Brunsting trusts for their own personal gain is a bitter sibling dispute over the administration of their parents' estate. Nothing could be further from the truth.

43. While real damages are difficult to calculate without fiduciary disclosures, the additional injury resulting from five years of improperly motivated "litigation" posturing, directly and proximately caused by these Defendants illicit conduct, are tangible, concrete, calculable and a matter of public record.

44. Every one of the Brunsting beneficiaries has been injured by the fraud perpetrated on the federal and state courts, upon the Brunsting family and upon Plaintiffs by these Defendants.

45. Jason Ostrom was instrumental in the plot to treat the Brunsting Trusts as if they were a probate asset and his feigned ignorance of the legal precedents set by pro se Curtis in this extended Brunsting Trusts litigation, is in direct conflict with his fiduciary obligation to know.

46. Defendant Jason Ostrom's feigned ignorance of law and fact are not defenses.

47. Defendant Ostrom also makes dubious statements regarding Plaintiff Munson's participation in protecting Plaintiff Curtis' property interest and those of the Brunsting trusts.

48. That participation is common knowledge and a matter of public record.

49. The name Rik Munson appears for the first time at Docket entry 9 in Curtis' original federal lawsuit and appears a total of ten times in the Official record on Appeal to the Fifth Circuit in 2012. (CA No. 12-20164)

IX. Amendment and Adoption by Reference

50. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and Federal Rule of Civil Procedure 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, this reply, the replies yet unfiled and the attached exhibits as if fully expressed therein;

51. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings and the claims stated therein, as exhibits in support of Plaintiffs' Complaint, as if originally attached thereto, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, 84 and those yet unfiled as if fully attached as exhibits thereto.

X. Conclusion

52. Defendant Jason Ostrom told the Honorable Judge Kenneth Hoyt in his application for approval of his First Amended Complaint that the purpose for a remand to state court was to consolidate with Plaintiff Carl Brunsting in order to afford complete relief to the parties.

53. Defendant Ostrom deprived Plaintiff Curtis of a federal judicial forum and access to the only Court of competent jurisdiction under false pretexts, by presenting unopposed motions to amend Plaintiff Curtis' federal complaint and to remand to Harris County Probate Court.

54. The Brunsting Trusts are the only heir to the "Estates of Elmer and Nelva Brunsting". Trust assets are not property belonging to the "Estates", and are not subject to probate administration, yet each of these Defendants insist this RICO lawsuit arises out of a dispute between siblings over inheritance expectancies and the administration of an estate and others

have pled Plaintiffs are disgruntled litigants seeking vengeance for being on the losing end of fully litigated state court determinations.

55. For the last five years, these Defendants have each participated in denying Plaintiff Curtis and each of the Brunsting siblings the enjoyment of their parents' benevolence. Each has engaged in gaming the judicial process, posing as advocates, to maximize fees and resolve nothing, while holding resolution of the Brunsting trusts hostage under a probate administration pretext.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) Motion to Dismiss filed by Defendant Jason Ostrom October 31, 2016, (Dkt 78) and hold this Defendant to answer.

Respectfully submitted,

November 18, 2016

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on November 18, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

7/1/08 Appt of Succ. Trustees

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

17-20360.2983

1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

2. Obtain the Release of Protected Health Information

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. Determination of "Incompetence" or "Incapacity"

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other

personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on July 1, 2008.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace L Kunz-Freed

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Cert of Trust

CERTIFICATE OF TRUST

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

2/24/10 Exhibit Dis Trust - Cert of Trust

CERTIFICATE OF TRUST
FOR THE
ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is 27-6453100. The Trust is irrevocable and no longer qualifies as a grantor trust.

   An acceptable abbreviation for account titling is as follows:

   NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

Candace Kunz Freed

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

United States District Court

for the

Southern District of Texas

CANDACE LOUISE CURTIS, Plaintiff,	§	
VS.	§	Civil Action No._____
ANITA KAY BRUNSTING, and AMY RUTH BRUNSTING And Does 1-100 Defendants	§ § § §	Jury Trial Demanded

PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION.

I.
Parties

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California. Defendant Anita Kay Brunsting, is a citizen of the State of Texas and Defendant Amy Ruth Brunsting a citizen of the State of Texas.

II.
Jurisdiction and Venue

2. This Court has federal subject matter and diversity jurisdiction of the state law claims alleged herein pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2) in that this action is between parties who

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Pg-11

2012 14538

CONFIRMED FILE DATE: 3/9/2012

NO. _____

IN RE: CARL HENRY BRUNSTING	§	IN THE DISTRICT COURT OF
	§	
	§	HARRIS COUNTY, TEXAS
	§	
	§	80 JUDICIAL DISTRICT

RECORDER'S MEMORANDUM
This instrument is of poor quality at the time of imaging

FILED
Chris Daniel
District Clerk
MAR 09 2012
Time: 4:14P
Harris County, Texas
By _____ Deputy

CARL HENRY BRUNSTING'S
VERIFIED PETITION TO TAKE DEPOSITIONS BEFORE SUIT

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Carl Henry Brunsting ("Petitioner"), asks the court for permission to take depositions by oral examination and/or on written questions to obtain testimony and documents to investigate his potential proceedings involving Anita Kay Brunsting ("Anita"), Amy Ruth Brunsting ("Amy"), Vacek & Freed, PLLC ("Vacek"), and Candace L. Kunz-Freed ("Freed") as authorized by Tex. R. Civ. P. 202.3(a), and in support thereof would show as follows:

1. Petitioner is a resident of Harris County, Texas and is one of the heirs of the estates of his parents, Elmer and Nelva Brunsting, who both resided in Harris County, Texas until their deaths. Petitioner is also one of the beneficiaries of the Brunsting Family Living Trust (the "Family Trust") and other trusts arising therefrom, as well as other trusts and estate planning tools implemented by his parents. Petitioner held a power of attorney for his mother, is the personal representative named in his mother's will, and was previously named to become the successor trustee of the Family Trust upon his mother's death.

2. The parties sought to be deposed and the documents, if any, to be requested of the witnesses are:

A. Vacek, a professional limited liability company formed under the laws of Texas doing business in Harris County, Texas which may be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300,

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS, PLAINTIFF	§ §	
VS.	§	CIVIL ACTION NO. 4:12-CV-00592
	§	JUDGE KENNETH M. HOYT
ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS	§ § § §	JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED PETITION

I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.

2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.

7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust ("Trust") and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff , Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff,and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance

with the Texas Property Code.

V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

FILED
2/12/2015 1:51.33 PM
Stan Stanart
County Clerk
Harris County

PROBATE COURT 4

DM

DATA-ENTRY
PICK UP THIS DATE

CAUSE NO. 412,249

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

JURY FEE PAID

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files this Second Amended Petition and for cause of action would show as follows:

I. PARTIES

Plaintiff, Candace Louis Curtis is a citizen of the State of California.

Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has made an appearance and can be served through her counsel of record.

Defendant is Carole Ann Brunsting, is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

Necessary Party is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas who has made an appearance and can be served through her counsel of record.

II. JURISDICTION AND VENUE

This Court had jurisdiction pursuant to Sections 32.002(c) and 32.005 of the Texas Estates Code, Chapter 37 of the Texas Civil Practice and Remedies Code, and Chapter 115 of the Texas Property Code. Venue is proper pursuant to Section 33.002.

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UNOFFICIAL COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on October 31, 2016, by Defendant Jason Ostrom in the above styled cause (Dkt 78), should be Denied.

It is SO ORDERED

_____ _____

Date

The Honorable Alfred H Bennet
United Stated District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' ANSWER TO DEFENDANT BERNARD MATHEW'S FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) and 12(b)(6) MOTION TO DISMISS

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Statutes

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18 U.S.C. §1964(c) 3

Rules

Federal Rule of Civil Procedure 12(b)(1) 3

Federal Rule of Civil Procedure 12(b)(6) 2

1. Plaintiffs filed 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) claims along with civil rights, common law breach of fiduciary and other claims on July 5, 2016.

2. On November 2, 2016, Defendant Bernard Lisle Mathews III filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6). (Dkt 81)

I. INTRODUCTION

3. In its purest form this lawsuit is about property and the intentions of Elmer and Nelva Brunsting that their worldly possessions pass to their issue without conflict, complications, or excess costs. In pursuit of that goal Elmer and Nelva Brunsting purchased a trust and estate plan package as both a product and a service of Albert Vacek, Jr.

4. According to assurances that Vacek gives his customers, his trust package was supposed to avoid what Vacek calls "the three evils". Those evils include "probate", "guardianship" and "taxes".

5. Vacek partner, Candace Kunz-Freed, began drafting instruments undermining the Brunsting trust as soon as Elmer Brunsting weakened (see Dkt 26-11 and 26-14) and then continued the erosion with each subsequent "Hurrah"[1], the next being the encephalitis and coma suffered by Carl Brunsting.

[1] In legal parlance a.k.a. a "qualifying event"

II. NATURE AND STAGE OF THE PROCEEDING

6. Plaintiffs in the above titled action, brought 18 U.S.C. §1964(c) Racketeer Influenced Corrupt Organization and other claims, both individually and as private attorneys general on behalf of the public trust, on July 5, 2016 in the Southern District of Texas.

7. On November 2, 2016, Defendant Bernard Mathews filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and Federal Rule of Civil Procedure 12(b)(6). (Dkt #81).

III. SUMMARY OF THE CASE

8. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl, Carole, and Defendants Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting, et al., per stirpes.

9. In 1996, Plaintiff Curtis' parents, Elmer Brunsting and Nelva Brunsting, created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue and for the benefit of the remaindermen grandchildren and great grandchildren. (Dkt 33-1)

10. The Brunstings restated their Trust in 2005 (Dkt 33-2) and amended the restatement in 2007. (Dkt 33-3)

11. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

12. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and divided its assets among an irrevocable decedent's trust and a revocable survivor's trust. (Dkt 33-2, Articles III and VII)

13. Nelva Brunsting passed on November 11, 2011 and a number of instruments surfaced that had been drafted after Elmer Brunsting became incompetent and after he passed, claiming changes had been made to irrevocable trusts. The 8/25/2010 QBD (Dkt 26-14)[2] (also called the extortion instrument) and the several appointments of successor trustee are just such instruments (Dkt 26-14)[3]

14. The acting trustees, Anita and Amy Brunsting, conducted themselves in complete secrecy. After Nelva Brunsting passed they refused to answer, account or provide disclosures and after two unsuccessful demand letters[4] advising Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit in the Southern District of Texas.

15. On March 6, 2012, Defendant Bernard Matthews filed an "emergency motion" for removal of lis pendens.[5] In the opening paragraph of his "emergency motion" Defendant Bernard Mathews states:

> *[Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7) confers exclusive jurisdiction over matters related to questions "arising in the administration or distribution of a trust" to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, Marshall v. Marshall, 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)]*

16. Mathews also attached a perjured affidavit signed and sworn to by Amy Brunsting to his March 6, 2012 "emergency motion"[6] and on March 8, 2012, Curtis' complaint was dismissed sua

---

[2] This instrument was the subject of Defendant Amy and Anita Brunsting's No-evidence Motion for Partial Summary Judgment (Dkt 26-5), and Curtis answer and demand to produce evidence. (Dkt 26-11)

[3] This is Plaintiff Curtis 20 page Motion for Partial Summary and Declaratory Judgment with numerous exhibits that remains unanswered by Defendants Anita and Amy Brunsting.

[4] Case 4:12-592 Exhibits 17 and 20 in the original federal complaint (4:12-cv-592 Dkt 1 at pages 67-68, and 71-79 respectively.

[5] Case 4:12-cv-592 Document 10 Filed in TXSD on 03/06/12

[6] Case 4:12-cv-592 Documents 10 and 10-1, Filed in TXSD on 03/06/12

sponte under the Probate Exception to Federal Diversity Jurisdiction, due to the Court's reliance upon the assertions made by officer of the Court, Bernard Mathews.

IV. STATEMENT OF THE ISSUES

1. Plaintiffs do not have an actual case or controversy with Mathews;
2. Plaintiffs do not state a claim against Mathews;
3. Mathews only handled an emergency motion for removal of lis pendens;
4. Mathews has immunity from civil accountability to his tort victims because he is an attorney.

V. PLAINTIFFS' REPLY

17. Candace Curtis v Anita and Amy Brunsting (4:12-cv-592) began in the federal Court in the Southern District of Texas on February 27, 2012, seeking equitable relief in the form of accountings, answers to information requests and monetary damages for known acts and omissions.

18. Plaintiff Curtis' original lawsuit alleged that all the information in the case was uniquely in the possession of the Defendants and included an affidavit with exhibits showing exactly where the case was at that point in time.

19. The federal Court dismissed an application for injunction filed with the original complaint due to want of service on the Defendants, and in the Order the Court expressed concern over whether or not the Court had subject matter jurisdiction. (4:12-cv-592 Dkt 8)

20. Defendant Bernard Mathews appears to have intentionally manipulated the Court's previous expression of concern over whether the Court had subject matter jurisdiction, knowingly misstating Texas Property Code §115.001 to be the Probate Code, and then

bootstrapping a Route Test theory that was very harshly reversed by the Supreme Court on the second page of the Marshall v. Marshall opinion he cited as his authority.[7]

> *"Nevertheless, the Ninth Circuit in the instant case read the probate exception broadly to exclude from the federal courts' adjudicatory authority "not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." 392 F.3d 1118, 1133 (2004). The Court of Appeals further held that a State's vesting of exclusive jurisdiction over probate matters in a special court strips federal courts of jurisdiction to entertain any "probate related matter," including claims respecting "tax liability, debt, gift, [or] tort." Id., at 1136. We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception".* Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1736

21. Curtis and Munson spent the next 14 months on an appeal before returning to the federal Court, more than four years ago. For this Court's perusal, Plaintiffs attach the "Appellants Opening Brief on Appeal", as it speaks directly to the root of matters presently before this Honorable Court. (Exhibit 1)

22. Defendant Mathews is currently listed as a staff attorney on the vacek.com web site (Exhibit 2) and was listed as a staff attorney with Vacek and Freed when he filed his disingenuous motion under the letterhead of Green and Mathews (4:12-cv-592 Dkt 10).

1. Not a Probate Matter

23. Plaintiff Curtis' federal appeal distinguished the Brunsting Trust from the Brunsting Estate.

24. According to the Fifth Circuit, the Brunsting Trusts are not assets belonging to any estate and are not subject to probate administration.

25. On March 2, 2012, a mere four days before his "emergency motion", Mathews filed a complaint in the Harris County District Court, on behalf of Plaintiff Reginald Parr. *Reginald D.*

[7] Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1736

Parr vs. Sherry Evon Dunegan CA 201213022. In that case Mr. Parr was suing Ms. Dunegan for breach of fiduciary in the administration of a Texas trust drawn up by the law firm of Vacek and Freed.

26. It would necessarily follow that an attorney preparing a complaint for the Harris County District Court, involving a substantively identical case to that of Plaintiff Curtis, would know that trusts are not heard exclusively in the probate court, and would know the difference between the Property Code and the Estate Code (which Mathews called the "Probate Code").

27. If Mathews read the Supreme Court opinion in Marshall v. Marshall before citing to that authority and signing his pleading, he would also know his Route Test assertions were patently disingenuous.

2. <u>Lis Pendens</u>

28. Defendants filed their "emergency" motion claiming to be trustees; that the property to which the lis pendens related was to be liquidated in order to distribute proceeds to the heirs, and that Plaintiff's only intent was to frustrate that sale.

29. The lis pendens at issue was amongst the papers filed with the Court, but was never on file with the County Recorder as to frustrate any sale.

30. The house itself was sold like it was on fire and neither Plaintiff Curtis nor siblings Carl or Carole have ever received any distribution of proceeds from the sale of that house.

31. After Bernard Mathew's "Emergency Motion" resulted in the improper dismissal of Plaintiff Curtis' action, Mathews immediately interfered with all three of Curtis' subpoenas for records, including the email records of Nelva Brunsting, Exxon Stock transfer records from Computershare, and Bank of America transaction records, all of which loom large in rebutting Anita and Amy's fact claims.

3. Mathew's Email: "Intend to Move this to Probate"

32. Subsequent to the dismissal of Plaintiff Curtis' federal lawsuit, Mathews emailed Bobbie Bayless, Carole Brunsting and Candace Freed, providing accounting spreadsheets that were shockingly revealing.

33. This email (Exhibit 3) was the first real indication of what is later revealed to be a concerted effort, with the sole purpose of converting Plaintiff Curtis' trust related breach of fiduciary claims into estate claims.

34. Mathews, and every other defendant attorney, has actively engaged in trying to accomplish what Vacek assures his customers his estate plans will avoid, "probate".

VI. AMENDMENT AND ADOPTION BY REFERENCE

35. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, 85. this reply and the attached exhibits, as if fully expressed therein;

36. Plaintiffs further adopt by reference all of the Defendants' Motions and pleadings, the claims stated therein and the exhibits attached, as exhibits in support of Plaintiffs' Complaint, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, and 84, as if fully attached as exhibits thereto.

VII. CONCLUSION

37. Bernard Mathew's "Emergency Motion" was disingenuous in its expressions of both law and fact, and was filed for the improper purpose of manipulating the Court's stated hesitancy over whether or not it had subject matter jurisdiction, thus achieving an improper dismissal.

38. This conduct multiplied the litigation for Plaintiff Curtis resulting in a 14-month delay and additional costs, and has exacerbated injury to the beneficiaries and the Brunsting Trust res.

39. Bernard Mathew's participation appears innocuous in a context vacuum, however, in hindsight, that conduct would appear to be part and parcel of the scheme and artifice to deprive.

40. Plaintiffs do have an actual controversy with Vacek and Freed staff attorney Bernard Mathews and have specifically articulated adequate in-concert aiding and abetting events and conspiracy claims that include Mr. Mathews.

41. Whether or not Mr. Mathew's conduct can be regarded as conduct normally associated with his role as an attorney in the larger view, is a valid subject for judicial consideration.

42. The entire Brunsting family has been victimized by this long con scheme fashioned by Albert Vacek Jr. and furthered by a probate court protected bully mob.

43. Only attorneys stand to benefit from embroiling the Brunsting siblings in probate court where nothing can, has been, or will be resolved without an agreement involving a flow of private wealth to public actors, with no judicial resolution of any substantive issues.

44. Bernard Mathews, and every other attorney involved in this dispute since, has demonstrated an intention to interfere with the Brunsting Beneficiaries' Trust Property interests under the disguise of administering a probate estate, and have interfered with those interests.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) and Rule 12(b)(1) Motion to Dismiss filed by Defendant Bernard Mathews November 2, 2016, and hold Mr. Mathews to answer.

Respectfully submitted,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 23rd day of November, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson
Rik W. Munson

Case No. 12-20164

In the United States Court of Appeals
For the Fifth Circuit

CANDACE LOUISE CURTIS,

Plaintiff - Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants - Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRIEF OF PLAINTIFF - APPELLANT

Candace Louise Curtis
1215 Ulfinian Way
Martinez, California 94553
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Appellant pro se

CERTIFICATE OF INTERESTED PERSONS

NO. 12-20164
Candace Louise Curtis v. Anita Kay Brunsting, et al.

The undersigned Plaintiff-Appellant pro se, certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

(1) Candace Louise Curtis, Plaintiff-Appellant, Beneficiary, Successor Co-Trustee for the Elmer Brunsting Irrevocable Decedent's Trust

(2) Anita Kay Brunsting, Defendant

(3) Amy Ruth Brunsting, Defendant

(4) Bernard Lilse Mathews III, Counsel for Defendants in the District Court

(5) The Honorable Kenneth Hoyt, Judge, United States District Court for the Southern District of Texas Houston Division

(6) Carl Henry Brunsting, Beneficiary, Executor, Successor Co-Trustee for the Elmer Brunsting Irrevocable Decedent's Trust

(7) Carole Ann Brunsting, Beneficiary

(8) Vacek & Freed, PLLC, Trust Law Firm

(9) Candace L. Kunz-Freed, Trust Attorney

NOTICE OF CORRELATIVE ACTION AND NEWLY DISCLOSED EVIDENCE

On March 9, 2012, Plaintiff-Appellant's brother, Carl Brunsting, filed a *Verified Petition to Take Depositions Before Suit*, in the District Court for Harris County Texas, No. 2012 14538. That Petition identifies the above named Defendant-Appellees, Anita Brunsting and Amy Brunsting, along with the law firm of Vacek and Freed, as having potentially adverse interests to that of Carl Brunsting.

Counsel for Carl Brunsting is Bobbie Bayless of Bayless and Stokes, Houston, Texas.

On April 2, 2012, the Houston firm of Vacek and Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Clerk, with application for No Administration.

On or about April 5, 2012, Curtis received a number of documents by email, addressed to Carl Brunsting c/o Bobbie Bayliss, Candace Curtis, and their sister Carole Brunsting, sent from Defendants' counsel Bernard Mathews, in "connection with litigation brought by Ms. Curtis and threatened by Carl Brunsting." These documents were offered to satisfy accounting requirements under the Texas Property Code and included spreadsheets labeled as Schedules A through J.

These "take my word for it documents" seem to indicate that more than half a million dollars in assets may have been self-dealt, commingled, or otherwise

misappropriated, **in the fifteen months prior to the death of Nelva Brunsting,** and that Defendants have not kept accurate books and records.

It should be noted here that misappropriation of fiduciary in excess of $200,000.00 is a class "A" felony in Texas, and that an elderly victim adds a class level enhancement.

On May 18, 2012, the Harris County District Court entered an Order authorizing Carl Brunsting to proceed with depositions.

/s/

Candace Louise Curtis
Plaintiff-Appellant pro se

STATEMENT REGARDING ORAL ARGUMENT

Curtis requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Fifth Circuit Rule 28.2.3, only to the extent it would aid the Court in understanding the factual background of this case and clarify the legal issues presented.

Appellant suggests that the issues presented can be determined upon the record, pursuant to Fed. R. App. P. 34(a)(3), and that oral argument would not benefit the panel, as the parties' positions are clear and the record is uncomplicated.

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STATEMENT OF JURISDICTION

This Appeal is from an Order [481-482] dismissing four civil tort causes of action, entered by the Honorable Kenneth Hoyt of the United States District Court for the Southern District of Texas, on March 8, 2012. A timely Notice of Appeal [493-494] was filed on March 12, 2012. The District Court was asked to exercise jurisdiction under 28 U.S.C. § 1332. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. To what extent, if any, does the probate exception to federal subject matter jurisdiction apply to causes of action for breach of fiduciary, fraud, conversion, and other civil torts that occur in fiduciary relations related to trusts, wills or estates?
2. To what extent, if any, can the probate exception to federal subject matter jurisdiction be applied where there is no probate?
3. To what extent, if any, can the probate exception to federal subject matter jurisdiction be applied to trust related controversies, given the fact that modern trusts are created for the dual purposes of minimizing death tax obligations and avoidance of probate?
4. Does a sua sponte order dismissing Plaintiff's action on jurisdictional grounds deny due process to Plaintiff, who received no notice of motion and no meaningful opportunity to be heard?

STATEMENT OF THE CASE

The record will show that Plaintiff, Candace Curtis (Curtis), and Defendants, Anita Brunsting and Amy Brunsting (Anita and Amy), are siblings.

The record will further show that their father, Elmer H. Brunsting, died April 1, 2009, and their mother, Nelva Brunsting, died November 11, 2011. Subsequent to their Mother's death, Defendants refused to communicate in a satisfactory manner, if at all, and provided no meaningful information after receiving demand letters Curtis sent to Defendants officially demanding an accounting, a list of assets, and copies of trust documents and records. Curtis also requested that Defendants file the Decedents' Wills and that they not dispose of property without prior notice [67-68] [71-74].

On February 27, 2012, Curtis filed a pro se complaint [5-17] in the United States District Court for the Southern District of Texas alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress, claiming that Defendants, acting as trustees, failed to notice her of any actions affecting her beneficial interests and refused to provide copies of non-protected trust instruments and accountings for the trust assets, or to report on any other acts of administration.

Curtis also filed an application for injunction [15] seeking to enjoin Defendants from further actions involving trust property until a true and complete

accounting, list of assets, copies of trust documents, and reports of transactions had been disclosed, or upon further order of the Court.

At the time Curtis filed her complaint in the federal court, neither Decedent's will had been filed, and no probate or other proceeding had been commenced in any court. [6]

Also filed amongst Plaintiff's papers were copies of common law lis pendens public notices.

Curtis's application for injunction was properly denied on February 28, 2012, pursuant to Fed.R.Civ.P. 65(b), as defendants had not yet been served.

In the order denying injunction [431] the Court expressed that it may not have subject matter jurisdiction, but did not articulate a reason, and did not invite briefs on any specific subject.

Following a telephone hearing on March 7, 2012, regarding defense motion for removal of a lis pendens notice, the Court issued an Order dismissing Plaintiff's complaint under the probate exception to federal diversity jurisdiction, citing to *Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735*. *[*481]*

STATEMENT OF FACTS

As the District Court correctly noted, Curtis has always maintained that the claims raised below are civil torts for personal injury, seeking monetary damages from Defendants in personam.

By Affidavit [18-31] in support of her complaint Curtis states that she has never received a true and complete accounting, has not received copies of trust documents relating to any now-existing trust in which she has a beneficial interest, has not received prior notice of actions affecting her beneficial interests, and has made the requisite written demands upon the fiduciary defendants prior to bringing court action.

All of the information necessary to the protection of Plaintiff's rights and beneficial interest is uniquely in the possession and under the control of Defendants.

> "Silence can only be equated with fraud when there is a legal duty to speak, or when an inquiry left unanswered would be intentionally misleading… We cannot condone this shocking conduct…. If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately." *U.S. v. Tweel, 550 F2nd 997, 299-300*.

Amy and Anita have the obligation to provide material information that they have secreted or otherwise withheld Curtis has the equitable right to demand the information from the Defendants, Amy and Anita. Amy and Anita have the equitable duty to disclose and to account, and have no lawful reason for

withholding or concealing the information. Amy and Anita have refused or otherwise failed to meet the fiduciary obligations owed to Curtis and are thus liable for breach of fiduciary and associated civil torts. There is no valid constitutional, statutory or other rational reason why the federal court cannot take cognizance of these civil tort causes of action.

STANDARD OF REVIEW

> "[a] trial court abuses its discretion when it bases its decision on an erroneous view of the law or a clearly erroneous assessment of the evidence." *United States v. Caldwell*,586 F.3d 338, 341 (5th Cir. 2009).

This Court is asked to review the District Court's dismissal of Plaintiff's four civil causes of action de novo.

SUMMARY OF ARGUMENT

1. There is no probate exception to federal diversity jurisdiction over an *inter partes* tort action, where a federal court is not asked to probate or annul a will or take jurisdiction over property in the possession of a state court.

2. The theory that one may be estopped from pursuing tort remedies by a probate exception where there is no probate is self-defeating. Where there is case or controversy, and the jurisdictional requisites of

diversity and amount in controversy are met, the federal courts have subject matter jurisdiction of torts whether there is a probate or not.

3. As it is the primary purpose for creation of a trust to avoid probate and reduce estate tax liabilities, it is irrational and a cruel irony that a competent federal tribunal would be barred from protecting the rights of one's beneficiaries because of some fictitious relationship between ministerial estate functions performed by ecclesiastical courts and controversies heard exclusively before courts of Chancery at Westminster.

4. The Sua sponte dismissal of Plaintiff's action, without notice and opportunity to be heard, is denial of Due Process.

ARGUMENT

NATURE OF THE CLAIM

The probate exception does not apply to *inter partes* civil tort claims seeking purely monetary damages from defendants in personam[1].

The District Court's Order of Dismissal [*481] at item II states:

> "The plaintiff's dispute arises out of the administration of the family Trust."

[1] Resting upon the authorities contained in the Brief for Petitioner Vicky Lynn Marshall No. 04-1544 before the United States Supreme Court ***Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735.*** Argument & Summary of Argument Pages 9-18 and authorities cited.

And at item III:

> "… However, in her pleadings, the plaintiff asserts that she is suing her sisters individually and severally as co-trustees for the Trust because they have failed… "to meet their first obligation under that power…""

The "Nature of the Claim" test has always been the choice of the Fifth Circuit, and these conclusions are not wholly relevant to application of the probate exception. Since there is no dispute that Curtis's suit seeks monetary damages from defendant trustee's in personam, questions surrounding distribution are moot. The Trust is not liable.

> "...an officer may be held liable in damages to any person injured in consequence of a breach of any of the duties connected with his office...The liability for nonfeasance, misfeasance, and for malfeasance in office is in his 'individual', not his official capacity..." 70 Am. Jur. 2nd Sec. 50, VII Civil Liability.

THE ROUTE TEST

Defendant's Emergency Motion for Removal of lis pendens [434] states:

> "[Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7) confers exclusive jurisdiction over matters related to questions "arising in the administration or distribution of a trust" to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, Marshall v. Marshall, 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)"

First impression seemed to indicate that Defendant's motion for removal of lis pendens should have been filed with the court Defendants claimed to be the

court having exclusive jurisdiction. This appears to be the same error to which the District Court fell victim.

Under closer scrutiny it becomes clear that Defendant's counsel, Bernard Mathews, misstated Texas Property Code §115.001, claiming it to be the Probate Code, and then bootstrapped to the Supreme Court what appears to be the Ninth Circuit's holding, that was very harshly reversed by the Supreme Court on the second page of the Marshall opinion.[2]

It is not Texas Probate Code §115.001, rather Texas Property Code §115.001, that grants original and exclusive jurisdiction over the administration of trusts, and that grant of jurisdiction is to the District Court not the Probate Court. The District Court is a court of general, not special, jurisdiction.

> "Nevertheless, the Ninth Circuit in the instant case read the probate exception broadly to exclude from the federal courts' adjudicatory authority "not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." *392 F.3d 1118, 1133 (2004)*. The Court of Appeals further held that a State's vesting of exclusive jurisdiction over probate matters in a special court strips federal courts of jurisdiction to entertain any "probate related matter," including claims respecting "tax liability, debt, gift, [or] tort." *Id., at 1136*. **We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception**". *(emphasis Curtis)*

The District court dismissed Curtis's action a priori on the assertion of Defendants' counsel without an FRCP 12(b) motion or jurisdictional hearing, even

[2] *Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1736*

though Defendants' own exhibits [473] show that the property subject to lis pendens was not property of a probate estate but of a resulting Trust.

Even if Defendants' counsel had stated the Texas statutes honestly, the Supreme Court in *Marshall* expressly dispels Defendants' route test assertions. In view of the very compelling brief filed by the petitioner before the Supreme Court in that case, it is difficult to envision an application of the probate exception where, as here, there is no probate.

> "Texas courts have recognized a state-law tort action for interference **[***37]** with an expected inheritance or gift, modeled on the Restatement formulation. See *King, 725 S. W. 2d, at 754*; *Brandes v. Rice Trust, Inc., 966 S.W.2d 144, 146-147* **[**499]** *(Tex. App. 1998)*. n5 It is clear, under *Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)*, that Texas law governs the substantive elements of Vickie's tortious interference claim. It is also clear, however, that Texas may not reserve to its probate courts the exclusive right to adjudicate a transitory tort. We have long recognized that "a State cannot create a transitory cause of action and at the same time destroy the right to sue on that transitory cause of action in any court having jurisdiction." *Tennessee Coal, Iron & R. Co. v. George, 233 U.S. 354, 360, 34 S. Ct. 587, 58 L. Ed. 997 (1914)*. Jurisdiction is determined "by the law of the court's creation and cannot be defeated by the extraterritorial operation of a [state] statute . . ., even though it created the right of action." *Ibid.* Directly on point, we have held that the jurisdiction of the federal courts, "having existed from the beginning of the Federal government, [can] not be impaired by subsequent state **[***38]** legislation creating courts of probate." *McClellan v. Carland, 217 U.S. 268, 281, 30 S. Ct. 501, 54 L. Ed. 762 (1910)* (upholding federal jurisdiction over action by heirs of decedent, who died intestate, to determine their rights in the estate (citing *Waterman, 215 U.S. 33, 30 S. Ct. 10, 54 L. Ed. 80*))." *Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1744.*

TEXAS STATUTORY PROBATE JURISDICTION

The correct jurisdictional statement for probate is found at Texas Probate Code §4:

> § 4. Jurisdiction of County Court With Respect to Probate Proceedings
> The county court shall have the general jurisdiction of a probate court. It shall probate wills, grant letters testamentary and of administration, settle accounts of personal representatives, and transact all business appertaining to estates subject to administration, including the settlement, partition, and distribution of such estates. Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 4, eff. Sept. 1, 1993.

TEXAS STATUTORY TRUST JURISDICTION

The correct jurisdictional statement for trusts is found at Property Code § 115.001:

> § 115.001. JURISDICTION. (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings concerning trusts, including proceedings to:
> (1) construe a trust instrument;
> (2) determine the law applicable to a trust instrument;
> (3) appoint or remove a trustee;
> (4) determine the powers, responsibilities, duties, and liability of a trustee;
> (5) ascertain beneficiaries;
> (6) make determinations of fact affecting the administration, distribution, or duration of a trust;
> (7) determine a question arising in the administration or distribution of a trust;
> (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;

> (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
>
> (10) surcharge a trustee.
>
> (b) The district court may exercise the powers of a court of equity in matters pertaining to trusts.

CUSTODIA LEGIS AND THE LAW OF COMITY

The District Court's Order of Dismissal [481] points to distribution in dismissing the action under the probate exception and further comments thusly:

> "Responding to the defendants' motion, the plaintiff seeks to satisfy the jurisdictional issue of the amount in controversy by stating that the *res* is the Trust."

The trial Court construes derivative rights for the primary premise of Curtis's action, borrowing from arguments made by Defendants, which appear nowhere in Curtis's pleadings. Fraud, intentional infliction of emotional distress and breach of fiduciary duties are civil torts, distinct from in Rem actions.

The incorporeal res of the complaint, as first stated in paragraph 3 therein [*6], includes only the body of rights harmed, or in jeopardy, resulting from the breach of fiduciary obligations on the part of Defendants. The second reference to "res" in the same paragraph of Curtis's complaint is a notice that federal jurisdiction was not precluded by doctrines of *Comity* or *Custodia legis*, as no prior action had been commenced in any other court, and Curtis fails to find "in rem" custody of property to be a formative factor in probate exception test analysis in any other context.

THE FIFTH CIRCUIT AND THE PROBATE EXCEPTION

In *Breaux et al., v. Dilsaver 254 F.3d 533 (5th Cir. 2001)* the court held that civil tort claims against administrators in their individual capacity do not fall within the probate exception. The court reasoned that because plaintiff's claim did not challenge the validity of probate proceedings, did not seek to recover property from either estate, and did not require that a federal court assume control of estate property or interfere with state probate proceedings, that it was outside the probate exception to diversity jurisdiction. The court held in the opening paragraph:

> This diversity suit arises from Appellants' claim that the Appellee committed fraud and breached his fiduciary duties while serving as administrator of two decedents' estates. The district court dismissed the suit, concluding that the probate exception to federal jurisdiction prevented it from hearing the case. We disagree: that the suit is against the administrator only in his personal capacity and does not require federal interference in any state probate proceeding. As the suit does not fall within the probate exception, we reverse and remand. *Breaux et al., v. Dilsaver 254 F.3d 533 (5th Cir. 2001)*

HISTORY OF PROBATE AND TRUSTS IN ENGLAND

Justice Ginsberg authored the opinion of the Supreme Court in *Marshall* and she begins with the following quote:

> In *Cohens* v. *Virginia*, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *19 U.S. 264, 6 Wheat. 264, 404, 5 L. Ed. 257 (1821). 1821).* **[***14]** Among **[**490]** longstanding limitations on federal jurisdiction otherwise properly

> exercised are the so-called "domestic relations" and "probate" exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English legal history…"

DISPUTES OVER LEGACIES

The Surrey Council of England[3] presents a history of Probate in England and Wales from the early 13th century until the Court of Probate Act of 1857.

> "Since the church had little jurisdiction over real estate there are few references in church records to land disputes. Whilst the church had some authority over litigation before the interregnum, disputes were often considered a matter for the King's court not the ecclesiastical ones, and after the interregnum any land or property disputes were usually conducted in Chancery (eg in "Bleak House" by Charles Dickens)."

The Surrey Council does not mention trusts in their published history of probate. Seagle[4] gives a history of the creation of trusts as follows:

> "The evasion of feudal dues and burdens began in the second half of the fourteenth century when the great landowners hit upon the idea of conveying the legal titles to their lands to groups of friends, with the understanding, however, that they would hold the land to certain uses of the grantor. Since the group of "*feoffees to uses*" as it was called, could renew itself, the feudal burdens which attached only on death could be avoided. Feudalism, it is true, was a chain of holding, and they lost in relation to their subtenants, but gained immeasurably more, in view of the vastness of their holdings, in relation to the greatest lord of all, who was the king. The common-law courts recognized only the legal title, but the Court of Chancery, being a court of conscience, stood ready to see to it that the feofees discharged

[3] http://www.surreycc.gov.uk/recreation-heritage-and-culture/archives-and-history/archives-and-history-research-guides/wills-and-probate-records/a-brief-history-of-probate-in-england-and-wales

[4] Book IV of "the Quest for Law" (William Seagle 1941) Chapter 13 "The Quest for Equity" page 190

> the obligations of the uses. Henry VIII tried to end the process of evasion by extorting from a rather reluctant Parliament the Statute of Uses in 1535. But it was not long before this was evaded by a ridiculously transparent device. Estates were now conveyed to A for the use of B. The Statute of Uses executed the first use, for it provided that when one stood seized of land to the use of another, the feofee should be deemed the legal owner. It was held, however, that the statute did not execute the second use! It has been well said that "by this means a statute made upon great consideration, introduced is a solemn and pompous manner, has had no other effect than to add at most three words to a conveyance.[5] The double use became what was called a trust, and the protection of the rights of the *cestui que trust* became the most important function of the Court of Chancery."

By these histories the common thread between probate and trust is the Court of Chancery. Trust matters were always heard in Chancery, while probate matters were heard in the ecclesiastical courts. However, all disputes arising under probate were heard in Chancery.

It thus appears that the probate exception nomenclature is a misnomer properly referring only to administrative functions that do not, as a matter of law, present a controversy[6] and this is the sole reason for the lack of federal statutory subject matter jurisdiction in regard to the probate of a will, the administration of an estate and any other matter that does not present the requisite elements of case or controversy.

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[5] Fisher, op. cit., p. 160 - The footnoted authorities for this section are given on page 412 of "the Quest for Law" Vol IV

[6] Brief for Petitioner Vicky Lynn Marshall before the United States Supreme Court No. 04-1544 Page 16 and authorities cited therein.

THE PROBATE EXCEPTION AFTER MARSHALL

Article III of the United States Constitution,[7] 28 U.S.C. §1331 and 28 U.S.C. §1332, defines modern federal diversity jurisdiction.[8] There is nothing in the language of these provisions that explicitly bar federal courts from hearing probate related claims.

The Supreme Court has:

> "…never recognized a "probate exception" to federal jurisdiction - i.e., a blanket jurisdictional bar that is uniquely applicable to probate-related claims." To the contrary, throughout its history, this Court repeatedly has held that there is broad federal jurisdiction over all kinds of probate related claims, including claims to decedents' estates by heirs, legatees and creditors.
>
> In the occasional case where the Court held that there was no jurisdiction over a particular probate-related claim, it did so because a statutory jurisdictional requisite was not met - for example, because the parties were not diverse or because the plaintiff had not pled a case "at common law or in equity" - *not* because a non-statutory subject-matter exception precluded the exercise of federal jurisdiction."[9]

---

[7] Section 1, cl. 2 reads in pertinent part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States."

[8] The grant of federal question jurisdiction under the Judiciary Act of 1875, 18 Stat. at 470, was later codified as 28 U.S.C. § 1331: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Diversity jurisdiction as originally granted by the Judiciary Act of 1789, 1 Stat. at 78, is codified in 28 U.S.C. 1332(a):

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $ 75,000, exclusive of interest and costs, and is between (1) Citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined in section 1603(a) of this title as plaintiff and citizens of a State or of different States.

[9] Please see *Brief for Petitioner Vickie Lynn Marshall in the Supreme Court of the United States No. 04-1544 - Summary of Argument page 9*

Recently, in *Marshall*, the Supreme Court revisited the probate exception, cautioning against its expansive application and stating that the probate exception is "narrow," and should not be used as an excuse for federal courts to decline to exercise jurisdiction over actions merely because they involve a probate-related matter.

Amongst the relevant progeny of *Marshall* are *Lefkowitz v. Bank of New York, 528 F.3d 102, 104 (2d Cir. 2007),* and *Wisecarver v. Moore, 489 F.3d 747 (6th Cir.2007)* each of which specifically describes Curtis's four causes of action as outside the probate exception to federal diversity jurisdiction. Following in the wake of Marshall, the Lefkowitz court stated the exception thusly:

> "While the issues involved in Plaintiff's remaining claims undoubtedly intertwine with the litigation proceeding in the probate courts, in addressing the claims, the federal court will not be asserting control of any res in the custody of a state court. A federal court properly "exercise[s] its jurisdiction to[10] adjudicate rights in [property in the custody of a state court] where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." Marshall, 126 S.Ct. at 1747 (citing Markham, 326 U.S. at 494, 66 S.Ct. **The probate exception can no longer be used to dismiss "widely recognized tort[s]" such as breach of fiduciary duty or fraudulent misrepresentation merely because the issues intertwine with claims proceeding in state court. Accordingly, these claims may not be dismissed under the probate exception."** (Emphasis added) *Lefkowitz v. Bank of New York, 528 F.3d 102, 104 (2d Cir. 2007)*

[10] Marshall, 126 S.Ct. at 1748

In *Wisecarver v. Moore, 489 F.3d 747 (6th Cir.2007)*, a case uniquely similar to the case in point in both fact and law, Plaintiffs raised 12 causes of action. The District Court dismissed the case under the probate exception to diversity. Wisecarver appealed the dismissal. Counts one through three were abandoned on appeal and of the nine remaining claims, five were dismissed and four were reversed and remanded. Most of the five tort claims were dismissed because the relief requested sought a probate related remedy, not because the causes themselves were within the dominion of probate per se. The Wisecarver court's legal reasoning concluded that:

> 12
> Therefore, to the extent that Plaintiffs' claims seek *in personam* jurisdiction over the Defendants, and do not seek to probate or annul a will, the probate exception does not apply. Turning to the complaint, Plaintiffs allege, in relevant part:
> 13
> Loretta Moore and Evelyn Page exercised undue influence on Floyd C. McCamy, and procured from Floyd C. McCamy his signature on testamentary documents . . . . The plaintiffs, upon information and belief, allege that the defendants obtained a Power of Attorney from the deceased prior to his death and used that Power of Attorney for their benefit. The defendants . . . failed to use good faith in exercising the authority granted by the power of attorney.
> 14
> The defendants . . . through the use of their fiduciary and confidential relationship, with Floyd C. McCamy, prior to his death, persuaded him at a time when he was both physically and mentally incompetent, to execute a Will leaving his entire Estate to them even though the bulk of his Estate had come from the family of the plaintiffs and the deceased, Floyd C. McCamy, had stated his intent to leave the Estate to the plaintiffs.
> 15

[Defendants] . . . used their relationship with Mr. McCamy and his frail, weak and deteriorating physical and mental condition to create animosity towards the plaintiffs and to exercise dominion and control over McCamy.

16

[B]y virtue of the confidential and fiduciary relationship and the defendants' dominance over Floyd C. McCamy, defendants procured a Will from him which was not the intent or desire of Floyd C. McCamy and was designed solely for the benefit of the defendants . . . .

17

[D]efendants . . . manipulated Floyd C. McCamy by means of undue pressure and undue influence in order to cause Floyd C. McCamy to execute a Will whereby the defendants were materially benefited [sic].

18

Defendants . . . by way of conversion, have retained money and personal property of the deceased and have exercised dominion and control over such property as their own to [the] exclusion of the rightful owner. . . .

19

Liberally construed, Plaintiffs' claims for breach of fiduciary duty, breach of confidential relationship, undue influence, and fraud are not barred by the probate exception because they seek *in personam* jurisdiction over the Defendants and do not seek to probate or annul a will. Instead, these claims allege that the Defendants received assets from McCamy during his lifetime by misusing the Power of Attorney executed by McCamy in their favor and that Plaintiffs were damaged as a result. Moreover, these assets were allegedly transferred during McCamy's lifetime and were therefore not part of his estate at his death. Thus, these assets were not subject to the probate court's disposition of McCamy's estate. *See Lamica v. Pierre*, No. 5:05-CV-964, 2006 WL 3423861 (N.D.N.Y. Nov. 28, 2006) (finding probate exception inapplicable to claims relating to property transferred before decedent's death).

20

Since *Marshall*, other circuit courts considering similar claims have also held that causes of action alleging breach of fiduciary duties, fraud, and undue influence do not necessarily fall within the scope of the probate exception. *See Campi v. Chirco Trust UDT*, No. 05-55595, 2007 WL 628049, at *1 (9th Cir. Feb. 27, 2007) (cause of

action alleging fraud, undue influence, and breach of fiduciary duties regarding property removed from a trust and never probated not barred by probate exception); *Jones v. Brennan,* 465 F.3d 304, 307-308 (7th Cir.2006) (breach of fiduciary duty claim regarding guardian's mismanagement not barred by probate exception). These decisions follow *Marshall's in personam/in rem* distinction and find that the principles underlying the probate exception are not implicated when federal courts exercise jurisdiction over claims seeking *in personam* jurisdiction based upon tort liability because the claims do not interfere with the *res* in the state court probate proceedings or ask a federal court to probate or annul a will.

21

Even though these claims in this case seek *in personam* jurisdiction, a majority of the relief that Plaintiffs seek would involve disturbing McCamy's estate, which has already been probated. For instance, Plaintiffs seek: (1) an order enjoining Defendants' disposition of assets received from McCamy's estate, (2) an order divesting Defendants of all property retained by them, which should be turned over to Plaintiffs as the heirs, next of kin, and intended beneficiaries of the deceased, and (3) a declaration that McCamy's probated will be declared invalid and that Defendants be denied any of the benefits of McCamy's will. Granting this relief is precisely what the probate exception prohibits because it would require the district court to dispose of property in a manner inconsistent with the state probate court's distribution of the assets. *Marshall,* 126 S.Ct. at 1748.

22

However, **Plaintiffs also seek two forms of relief which would not implicate the probate exception. First, they seek an accounting of assets received during the last two years of McCamy's life. As mentioned above, the removal of these assets from McCamy's estate during his lifetime removes them from the limited scope of the probate exception.** Second, they seek a monetary judgment in an amount to be determined in relation to the assets so removed.

23

Plaintiffs' remaining claims, those seeking money damages and other remedies relating to the procurement and promotion of a false will, are barred by the probate exception. These claims challenge the validity of McCamy's will and would require the district court to "disturb or affect the possession of property in the custody of a state court" because the state court already probated McCamy's estate. *Jones,* 465

> F.3d at 307-08. These claims clearly involve the probate or annulment of a will and thus are barred by the probate exception.
> 24
> AFFIRMED in part and REVERSED in part. *Wisecarver v. Moore, 489 F.3d 747 (6th Cir.2007)*

Although the Wisecarver Court makes a valid distinction as it relates to estates, Curtis questions whether a trust distribution remedy remains a valid factor in determining application of the probate exception in the wake of Marshall.

PROBATE EXCEPTION SUMMARY

The "*nature of the claim"* test has always been the choice of the Fifth Circuit. Breach of fiduciary causes were not excluded under the probate exception in the Fifth Circuit, even before Marshall, so long as the relief sought was in personam, and granting it would not interfere with state probate proceedings.

The absence of *custodia legis* negates application of the law of "*Comity".*

The "*route test*" can no longer be used to exclude federal subject matter jurisdiction after the Supreme Court's holding in *Marshall*.

The civil torts complained of in the Court below are not ancillary to probate and, thus, the Seventh Circuit's *Practical Test* does not apply, nor do any of the three abstention doctrines. Like the *"route test"* Curtis believes application of the Seventh Circuit's "ancillary to probate" or "practical test" may not be wholly viable after Marshall, and that trust matters are not barred by any so-called probate exception.

BREACH OF FIDUCIARY IS A VIOLATION OF PUBLIC POLICY

Curtis alleges Defendants have failed to fully disclose all material facts affecting her beneficial interest, refused to provide non-privileged documents and information as requested, appear to have mismanaged assets, may have engaged in self-dealing, co-mingling and use of fiduciary property to the injury of Curtis and for their own benefit, have failed to file true, complete, accurate and timely accountings, appear to have failed to maintain accurate books and records, have refused to disclose acts of administration, appear to have caused tax liabilities in a manner violative of trust terms, have shown bias and hostility towards Curtis, appear to have trespassed upon the Elmer Brunsting irrevocable decedents trust, to which Defendants are most likely not the proper co-trustees, and appear to have failed to protect assets in which Curtis has a beneficial interest.

Where there is a claim of breach of fiduciary regarding any transaction, and the appearance of a conflict of interest is shown, the presumption of impropriety applies and the burden of bringing forth proof that the actions were fair, necessary or justified is upon the fiduciary. The federal courts are not foreclosed from addressing these kinds of public policy concerns whether civil, criminal or both.

DUE PROCESS

Due Process unquestionably requires both notice and a meaningful opportunity to be heard. The burden of establishing jurisdiction of any court over

either person or subject matter is upon the Plaintiff. However, Defendants never filed a motion challenging jurisdiction under Fed.R.Civ.P. 12(b). The Court never invited briefs on application of the probate exception to this case, there was no jurisdictional hearing, and there are no transcripts of any conference or hearing.

The Court's a priori order, issued sua sponte, denied Curtis Due Process, as Curtis has a right to notice and a meaningful opportunity to be heard on any jurisdictional challenge, prior to the Court's dismissal of the action.

> For purposes of a motion to dismiss for lack of subject matter jurisdiction as a matter of law, the factual allegations of the complaint are presumed to be true and all reasonable inferences are to be made in favor of the plaintiff. *Whisnant v. United States, 400 F.3d 1 177, 1 179 (9th Cir. 2005)*
>
> However, where the jurisdictional issue is bound up with the merits, the entire factual dispute is appropriately resolved by the proceeding on the merits. *Augustine* ***v.*** *United States, 704 F.2d 1074, 1077 (9th Cir. 1983)*

Justice Ginsberg authored the Supreme Court's opinion in *Marshall* and ends that 12 page instrument with the following quote:

> "Rather than preserving whatever vitality that the "exception" has retained as a result of the *Markham* dicta, I would provide the creature with a decent burial in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine. **[***46]** See *Lance v. Dennis, 546 U.S. 459, 126 S. Ct. 1198, 163 L. Ed. 2d 1059 (2006)* (Stevens, J., dissenting)."

CONCLUSION

Breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress clearly fall outside what remains of the so-called "probate exception" to federal subject matter jurisdiction, whether or not the obligations breached interweave with trust or estate matters.

The Federal Court is only excluded from exercising the limited ministerial functions of probate courts, and those limits are consistent with what is expressed in Texas Probate Code §4.

The Federal Court has statutory jurisdiction to hear this controversy, and has the equitable jurisdiction to provide any relief that could be obtained from the Texas District Court under Texas Property Codes § 114.008 and § 115.001, including interpreting trust provisions, enjoining trustees from acting, compelling trustees to account, replacing trustees, dissolving a trust, distributing trust assets and any other relief that could be obtained from the Texas State District Court.

Wherefore, Plaintiff-Appellant Curtis herein respectfully moves this court to issue an order reversing the District Court's dismissal of her four causes of action, and remand to the District Court for further proceedings consistent with this Court's learned opinion.

Further, Curtis asks this Court for instruction to the U. S. District Court, to reconsider her application for injunction with a proper view of the law and in light of the fact Defendants have been served.

Curtis also asks that Defendants' counsel Bernard Mathews be ordered to show cause why he should not be held in contempt and sanctioned for perpetrating a fraud upon the District Court, and further order that Defendants are to bear the costs associated with this appeal.

Respectfully submitted,

/s/

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
(925) 759-9020
Plaintiff-Appellant pro se

CERTIFICATE OF SERVICE

I, Candace L. Curtis, certify that today, June 11, 2012, a copy of the brief for appellant, a copy of the record excerpts, and the official record in this case, consisting of one CD, were served upon George William Vie III, by certified mail, No. 7010 0290 0002 8531 8897, postage prepaid to him at One City Centre, 1021 Main Street, Suite 1950, Houston, TX 77002.

/s/

Candace L. Curtis

CERTIFICATE OF COMPLIANCE

Pursuant to 5TH CIR. R. 32.2.7 (c), undersigned pro se Plaintiff-Appellant certifies that this brief complies with the type-volume limitations of 5TH CIR. R. 32.2.7 (b).

1. Exclusive of the portions exempted by 5TH CIR. R. 32.2.7 (b)(3), this brief contains 6,844 words printed in a proportionally spaced typeface.

2. This brief is printed in a proportionally spaced, serif typeface using Times New Roman 14 point font in text and Times New Roman 12 point font in footnotes produced by Microsoft Word 2010 software.

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4. Undersigned understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5TH CIR. R. 32.2.7, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

/s/

Candace L. Curtis

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About Bernard L. Mathews

Texas Estate Planning Attorney

Bernard L. Mathews
Attorney at Law

Mr. Mathews has a varied practice that includes estate planning, banking, probate litigation, business litigation and a multitude of other business related matters. He has practiced in Texas and California for 32 years. Mr. Mathews has designed estate plans for numerous clients. His asset protection experience has been developed through real world matters involving creditors, debtors and would-be debtors.

EDUCATION

Juris Doctor, Loyola University of Los Angeles School of Law, 1978
Bachelor of Aerospace Engineering, Georgia Institute of Technology (Georgia Tech), 1969

JURISDICTIONS ADMITTED TO PRACTICE

United States District Courts for all Districts of Texas and California
Fifth Circuit Court of Appeals
United States Tax Court

PROFESSIONAL & BAR ASSOCIATION MEMBERSHIPS

State Bar of Texas and State Bar of California
Board Certified in Civil Trial Law by the Texas Board of Legal Specialization
Houston Bar Association
Probate, Trust and Estate Section
Litigation Section
Fee Dispute Committee

PERSONAL

- Resident of Spring, Texas
- Married to Linda S. Mathews since 1974.
- One daughter, Kenna, a graduate of Texas A&M University and currently a benefits administrator for a nationwide apartment development company
- Former Aerospace Engineer
- Avid tennis player

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Well organized, informative, useful and practical seminar presented in an interesting and even entertaining manner!

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Al Vacek @alvacek

Pre-Paid Funeral Plans May Have Hidden Costs
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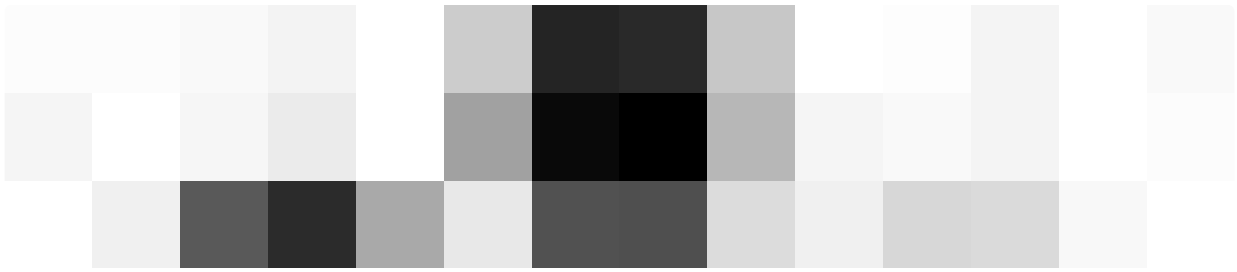

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Subject:	Brunsting Family Living Trust
From:	Bernard Mathews (texlawyer@gmail.com)
To:	bayless@baylessstokes.com; occurtis@sbcglobal.net; cbrunsting@sbcglobal.net;
Cc:	akbrunsting@suddenlink.net; at.home3@yahoo.com; candace@vacek.com;
Date:	Thursday, April 5, 2012 12:18 PM

Attached is a letter with the language set forth below, and a Trust Code Accounting with schedules. Related documents will be sent in a separate e-mail to reduce the size of the file.

"
via e-mail - bayless@baylessstokes.com
Carl Brunsting
c/o Bobbie Bayless

via e-mail - occurtis@sbcglobal.net
Candace Curtis

via e-mail - cbrunsting@sbcglobal.net
Carole Brunsting

Re: Brunsting Family Living Trust

Dear Ms. Bayless, Curtis and Brunsting:

I represent Anita and Amy Brunsting in their capacity as Successor Trustees of the Brunsting Family Living Trust, and its sub-trusts (collectively, the "Trust"), in connection with litigation brought by Ms. Curtis and threatened by Carl Brunsting.

I have had previous contact with Ms. Curtis and Ms. Brunsting, but have not had occasion to discuss this matter with Ms. Bayless, as yet. I am hoping to have a frank discussion with her after the dissemination of the materials being forwarded to you with this letter.

Requests for an accounting have been received from Ms. Curtis. Forwarded with this letter is an accounting in the format required by Texas Trust Code §113.152. In addition, schedules for related matters are included for historical purposes.

I am also attaching a recent appraisal for the farm land in Iowa, and the appraisal and contract for the residential property in Houston.

The trustees have made every effort to provide you with a complete and accurate picture of the assets and liabilities of the Trust. It is not practical to copy and supply to all of you the supporting documents, but a date and time can be arranged at my offices, or the offices of Vacek & Freed, PLLC, to assemble all supporting documentation for your review. My only request is that we do this one time for all of you.

I am cognizant of the hearing set for April 13, 2012 in the Harris County District Court. I am hopeful that we can avoid proceeding on that hearing through cooperation and communication. If a meeting with the trustees would assist in this regard, I am happy to assist in arranging that.

17-20360.3052

As you may know, Ms. Bayless has requested that the original pour-over will of Nelva Brunsting be filed with the probate court. This has been done along with the will of Elmer Brunsting. Should we not be able to move forward on resolving questions and issues in connection with Trust administration, I will be moving to transfer the District Court matter, seeking authority for pre-suit discovery, to the Probate Court, under the cause number assigned to Nelva's will. I will all also be opposing the discovery on grounds that it is unnecessary and a burden on the Trust and the beneficiaries. If any discovery is authorized, I will request the opportunity to depose Carl Brunsting first, to determine that he has truly authorized this action against his sisters.

Obviously, I am hoping that family order can be restored, and we can work through this without court intervention.

Please let me know if you are unable to open the attachments associated with the e-mail of this letter, or want to have hard copies sent to you (please provide the address you would like me to use).

Please also contact me if you have any questions following your review of these materials, or want to schedule some form of follow up."

--
Bernard Lilse Mathews, III
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Attachments

- Schedule J.pdf (50.26KB)
- Code 113.152 Accounting.pdf (32.62KB)
- Schedule A.pdf (72.88KB)
- Schedule B.pdf (94.48KB)
- Schedule C.pdf (24.97KB)
- Schedule D.pdf (163.79KB)
- Schedule E.pdf (600.14KB)
- Schedule F.pdf (185.87KB)

17-20360.3053

- Schedule G.pdf (63.56KB)
- Schedule H.pdf (36.61KB)
- Schedule I.pdf (35.45KB)
- Lt Trust beneficiaries with accounting.pdf (46.14KB)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on November 2, 2016, by Defendant Bernard Mathews in the above styled cause (Dkt 81), should be Denied.

It is SO ORDERED

_____
Date

_____
The Honorable Alfred H Bennet
United Stated District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' ANSWER TO DEFENDANT GREGORY LESTERS' MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(6)

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I. Introduction

1. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas, individually and as private attorneys general, alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. §§1961-1968, and the right of private claims provided for at 18 U.S.C. §1964(c). (Dkt 1)

2. On November 7, 2016, Defendant Gregory Lester filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 83)

17-20360.3056

II. The Issues

A. Plaintiffs have not adequately pleaded the necessary predicate acts.

B. The Plaintiffs have not stated a RICO claim under section 1962(c).

1. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).

2. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

C. Plaintiffs have failed to plead a cognizable RICO enterprise.

1. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

2. Plaintiffs' enterprise allegations are too vague and conclusory.

3. Plaintiffs' alleged enterprise lacks continuity.

D. Plaintiffs have failed to adequately plead a pattern of racketeering activity.

E. The Plaintiffs have not stated a RICO claim under section 1962(d).

1. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

F. Plaintiffs' claims for "Hobbs Act," "wire fraud," "fraud under 18 U.S.C. §1001" and "Honest Services" fail because those statutes do not create private causes of action.

1. The Hobbs Act does not create a private cause of action.

2. The Wire Fraud statute does not create a private cause of action.

3. The claim for "Fraud under 18 U.S.C. §1001" is not a private cause of action.

4. The claim for "Honest Services" is not a private cause of action.

5. Plaintiffs rely on impermissible collective pleading.

III. Plaintiffs' Argument

3. Defendant challenges the sufficiency of the RICO Complaint on all of the usual substantive ground, in every subdivision of the nine necessary pleading elements for 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) claims, but fails to consider the ambit of federal "aiding and abetting" and "conspiracy" statutes.

4. Defendant asks the Court to take a disjointed view of the mosaic as if its parts were somehow unrelated, but Defendants are each charged with "participation" in the affairs of an enterprise through "in-concert aiding and abetting". Plaintiffs need only show that Defendant performed an act in furtherance of the goals of the enterprise.

Participation

5. Gregory Lester is charged with participation in the affairs of an enterprise through a pattern of racketeering activity involving the commission of two or more predicate acts. Mr. Lester's Motion admits there are almost fifty predicate acts claims, but argues that none specifically relate to him.

6. Mr. Lester's Motion actually admits to his participation and, while claiming Plaintiffs' Addendum of Memorandum is "replete with inaccuracies", Mr. Lester's introduction claims Plaintiff Candace Curtis is a disgruntled sibling in a probate case.

7. The record will show that Candace Curtis is a Plaintiff in a federal breach of fiduciary lawsuit, involving only the Brunsting Trusts[1] (Exhibit 1), that the case was dismissed under the probate exception, (Exhibit 1 entry 14) and appealed to the Fifth Circuit Court of Appeals,

[1] Curtis v Brunsting 4:12-cv-592 filed TXSD 2/27/2012 and 704 F.3d 406.

(Exhibit 1 entry 16) where the dismissal was reversed and remanded back to the U.S.D.C. (Dkt 34-4)[2]

8. Back in the U.S.D.C. "Plaintiff Curtis" obtained a preliminary injunction to prevent wasting of trust assets.[3] On that very same day, federal Plaintiff Candace Curtis was named a "Nominal Defendant" in a state probate court suit styled "Carl Henry Brunsting Individually and as Executor for the Estates of Elmer and Nelva Brunsting", (Dkt 33-6) hereinafter "The Probate Matter".

9. "The Probate Matter" raises only claims relating to the Brunsting Trusts. It should be noted that the Brunsting Trusts were in the custody of a federal Court when the state court claims were filed.

10. The record will also show that Defendant Jason Ostrom filed an unopposed motion to remand Curtis v Brunsting to state probate court, to be consolidated with the "Estate of Nelva Brunsting" 412,249, where federal "Plaintiff Curtis" was named "Defendant Curtis".

11. Curtis v Brunsting, in the Fifth Circuit, soured the market for looting inter vivos trusts under the pretext of probate administration and these Defendant "legal professionals" are a bunch of disgruntled members of a probate bully mob seeking vengeance for being on the losing end of a fully litigated Federal Fifth Circuit determination, that inter vivos trusts are not assets of a probate estate and are not subject to their degenerate version of probate administration.[4]

12. Mr. Lester's participation involved drafting a false report for a purpose other than that for which it was authorized and Mr. Lester's participation is easily shown by the documented sequence of events and his own admissions.

[2] Also Docket entry 24 in Curtis v Brunsting 4:12-cv-592
[3] Curtis v Brunsting 4:12-cv-592 Docket entry 40 (Dkt 26-2 in this case)
[4] See the Brunsting Wills (Dkt 41-3 and 41-4)

IV. The Report of Temporary Administrator Gregory Lester

13. The "Report of Temporary Administrator Pending Contest", (Dkt 83-2) was filed in the "Estate of Nelva Brunsting" 412249 on January 14, 2016.

14. The "Report" is not a report but a caricature of the racketeering conspiracy itself. It is a confession of the intention of all of these Defendants, as exemplified by the public record, to redirect the Brunsting inter vivos trust assets into a probate court, where there is not, and has never been, in Rem jurisdiction over the Brunsting Trusts.

15. The manifest purpose for the "Report" was to further the artifice initiated by Bayless when she filed exclusively trust related lawsuits in state courts, in the name of an estate, on January 29, 2013 and April 9, 2013.

16. Gregory Lester and Jill Willard Young agreed to further that plan on and before September 10, 2015[5]. Part of that scheme was to bully the beneficiaries of the Trusts into a sham mediation, staged for the sole purpose of extracting attorney fees from the Brunsting Trusts. (Dkt 26-16)

17. The "Report", when compared to the record, displays numerous misstatements and contradictions, while merely posing as a report on the validity of "Estate" claims, as hereinafter more fully appears.

18. The "Report" never once mentions the Wills of Elmer or Nelva Brunsting and never once identifies an heir nor any assets belonging to the "Estates".

19. In evaluating the "Estate" claims, the substance of the "Report" mentions Trustees and the Brunsting Trusts one-hundred fifty-five (155) times, while the words "Estate" (7) and probate (17) appear only in non-substantive contexts.

[5] This is the hearing referred to by Defendant Neal Spielman on March 9, 2016 (Dkt 26-16) and Plaintiffs have been unable to obtain a transcript or an explanation from Mr. Baiamonte for the lack thereof.

20. It has already been shown that the approved inventories (Dkt 41-7) contain only one-half of an old car and the pending claims against Candace Freed in the District Court, but neither is mentioned in the "Report".

21. The "Report" never mentions the merits of the "Estate" claims, but focuses entirely on claims relating to beneficiaries of the heir-in-fact "Trust", which had already been held in the Fifth Circuit not to be property belonging to the "Estates". (Dkt 34-4)

22. It should also be noted that administration of both Estates had been dropped on April 4, 2013, (Dkt 41-5 and 41-6) just five days before "The Probate Matter" involving only the Brunsting Trusts was filed. (Dkt 34-7)

23. In the Addendum to the report, later filed by Mr. Lester, (Exhibit 2) he states the following (emphasis added):

> ***Trustees of the Brunsting Family Living Trust***
>
> *On July 1, 2008 an Appointment of Successor Trustees was executed by Nelva Erleen Brunsting, also known as Nelva E. Brunsting, pursuant to Article IV. Section B. of the Brunsting Family Living Trust. This document appointed Carl Henry Brunsting and Anita Kay Brunsting as successor co-trustees if Nelva E. Brunsting fails or ceases to serve. If either Carl Henry Brunsting or Anita Kay Brunsting should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then* ***The Frost National Bank*** *shall serve as the sole successor trustee. A copy of the Appointment of Successor Trustees is attached hereto as the first exhibit to first supplement.*

24. What the instrument actually says is (emphasis added):

> *"If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then* ***CANDACE LOUISE CURTIS*** *shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee."*

Defendant Exhibit A

25. Defendant's Exhibit A (Dkt 83-1) is the Order Appointing Temporary Administrator Gregory Lester.

26. The appointment was made pursuant to Estates Code 452.051 which reads:

> *SUBCHAPTER B. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL OR ADMINISTRATION*
>
> *Sec. 452.051. APPOINTMENT OF TEMPORARY ADMINISTRATOR. (a) If a contest related to probating a will or granting letters testamentary or of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require.*
>
> *(b) The appointment may continue until the contest is terminated and an executor or administrator with full powers is appointed.*
>
> *(c) The power of appointment under this section is in addition to the court's power of appointment under Subchapter A.*
>
> *Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.*
>
> *Amended by:*
>
> *Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 44, eff. September 1, 2015.*

27. In the Order the Probate Court found that it had jurisdiction and venue over the Decedent's Estate and appointed Mr. Lester "Temporary Administrator" with limited powers to evaluate all claims filed against 1) Candace Freed 2) Anita Kay Brunsting, 3) Amy Ruth Brunsting, and 4) Carole Ann Brunsting, (Dkt 83-1 Numbered paragraph 1) and report to the Court regarding the merits of those claims.

28. The cestui que (beneficiary) is "the Trust" and the Trust is the only heir-in-fact to the Estates. Assets in the inter vivos trusts are not property belonging to the Estates and do not come within the purview of "probate administration".[6]

[6] Curtis v Brunsting 704 F.3d 406, 410 (Jan 2-13)

29. Does the "Estate" have standing to bring claims against beneficiaries for trespass against the cestui que trust, committed during the life of a Grantor, or do those claims belong to the beneficiaries and the heir-in-fact Trust?

30. This question was settled in the Fifth Circuit in connection with the very Trusts at issue here, but was never considered in the report on the merits of any "Estate" claims.

V. The Report and the Extortion Instrument

31. The "Report" contains numerous assertions that misapplications of fiduciary are benign, justified, or can simply be "equalized" with more distributions of Brunsting Trust assets.

32. The "Report" ultimately concludes that if the Court were to rule on the "No Contest Clause" in the 8/25/2010 QBD, Curtis and her brother Carl would take nothing from the litigation.

33. The "Report" does not mention the controversy regarding the instrument, (Dkt 26-5 and 26-11) or which of the three alleged versions he selected for what reasons, or how it stretches beyond the limits stated in the report to reach to the irrevocable, un-amendable Trusts, or how any of that relates to property belonging to an Estate.

34. The "Report" contains warped conclusions, and while paraphrasing the irrevocable and unamendable trust provisions, the "Report" ultimately determines that changes alleged to have been made by Nelva alone were proper, "unless it can be shown Nelva was incompetent". (Dkt 83-2 page 10)

35. The facts of record are that Nelva wrote to Candace Curtis in her own hand verifying that what Anita and Amy claim Nelva said and did (through the 8/25/2010 QBD) is "not true". (Exhibit 3)

36. Nelva was not incompetent, the laws of the Trusts do not allow changes to be made by Nelva alone, no court of competent jurisdiction changed the trusts, and Nelva's state of mind at the time changes were made is irrelevant.

VI. Amendment and Adoption by Reference

37. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants' Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, 85, 86, this reply, and the attached exhibits, as if fully expressed therein.

38. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings, the claims stated therein and the exhibits attached, as exhibits in support of Plaintiffs' Complaint, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, and 84, as if fully attached as exhibits thereto.

VII. Conclusion

39. Plaintiffs have more than adequately pled person, enterprise, conspiracy, pattern and fraud with the necessary particularity, and with each response to Motions to Dismiss, Plaintiffs establish participation and continuity more fully.

40. Defendant may not assert opposing claims of fact under federal Rule 12(b)(6).

41. None of the Brunsting siblings are heir to the estates of Elmer or Nelva Brunsting, none have challenged either Will, and none have individual standing in the "Estates of Elmer or Nelva Brunsting". (Dkt 41-3 and 41-4)

42. Assets in the Brunsting inter vivos trusts are not assets belonging to any "Estate" and are not subject to probate administration. (Dkt 34-4) The Executor of the Estates has no standing to bring "Estate" claims relating to the inter vivos trusts in any probate court.

43. Curtis v Brunsting 4:12-cv-592 is a lawsuit involving only the Brunsting Trusts[7].

44. Upon the death of Elmer Brunsting the family trust not only became irrevocable, but it became unamendable, and the Decedent's Trust was created both irrevocable and unamendable. The only exception is "Court of Competent Jurisdiction". The Brunsting trusts could not even be decanted without court intervention and were not lawfully decanted, amended or revoked.

45. There is no 8/25/2010 QBD as a matter of law and nothing in the Lester report can be defended against the record of proceedings or the law of the trust.

46. Gregory Lester should be held to defend his "Report" under oath, just as all of these Defendants should.

WHEREFORE, Plaintiffs respectfully move this Honorable Court for an Order denying the Motion to Dismiss filed by Defendant Gregory Lester November 7, 2016. (Dkt 83)

Respectfully submitted,

November 27, 2016,

/s/Candace L. Curtis
Candace L. Curtis

/s/Rik W. Munson
Rik W. Munson

[7] Curtis v Brunsting 704 F.3d 406 (Jan. 2013)

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 27th day of November 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/Candace L. Curtis
Candace L. Curtis

/s/Rik W. Munson
Rik W. Munson

CLOSED,REMANDED

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:12-cv-00592

Candace Louise Curtis v. Anita Kay Brunsting et al **Case remanded to Harris County Probate Court No. 4.**
Assigned to: Judge Kenneth M. Hoyt
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012
Date Terminated: 05/15/2014
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Special Master

William West
Accountant

represented by **Timothy Aaron Million**
Hughes Watters Askanase
Total Plaza
1201 Louisiana St., 28th Floor
Houston, TX 77002
713-759-0818
Fax: 713-759-6834
Email: tmillion@hwa.com
ATTORNEY TO BE NOTICED

Plaintiff

Candace Louise Curtis

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Ostrom Sain LLP
5020 Montrose Blvd
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Carl Brunsting
Necessary Party and Involuntary Plaintiff

represented by **Carl Brunsting**
PRO SE

V.

Defendant

Anita Kay Brunsting

represented by **Bernard Lilse Mathews , III**
Green and Mathews LLP
14550 Torrey Chase Blvd
Suite 245

17-20360.3067

Houston, TX 77014
281-580-8100
Fax: 281-580-8104
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TERMINATED: 02/20/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

George William Vie , III
Mills Shirley LLP
2228 Mechanic Street
Suite 400
Houston, TX 77550
713-571-4232
Fax: 713-893-6095
Email: gwv_order@millsshirley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Amy Ruth Brunsting represented by **Bernard Lilse Mathews , III**
(See above for address)
TERMINATED: 02/20/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

George William Vie , III
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Does 1-100

Defendant

Carole Ann Brunsting

Defendant

Candace L. Kunz-freed

Defendant

Albert E. Vacek Jr.

Defendant

Vacek & Freed, PLLC

Defendant

17-20360.3068

The Vacek Law Firm PLLC

Defendant

Bernard Lilse Mathews III

Date Filed	#	Docket Text
02/27/2012	1	PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee $ 350) filed by Candace Louise Curtis. (Attachments: # 1 Continuation, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dterrell,) Modified on 2/27/2012 (dterrell,). (Entered: 02/27/2012)
02/27/2012	2	PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012	3	INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	4	REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	5	NOTICE by Candace Louise Curtis, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012	6	NOTICE by Candace Louise Curtis, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012		Civil Filing fee re: 1 Complaint,, : $350.00, receipt number CC003143, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012		Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed.(dterrell,) (Entered: 02/27/2012)
02/28/2012	7	ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus,) (Entered: 02/28/2012)
03/01/2012	8	ORDER denying the application for a temporary restraining order and for injunction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/01/2012)
03/05/2012	9	Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # 1 cover letter) (saustin,) (Entered: 03/05/2012)

17-20360.3069

03/06/2012	10	EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # 1 Affidavit Affidavit of Amy Brunsting, # 2 Exhibit Property Appraisal, # 3 Exhibit Sale Contract, # 4 Exhibit Tax Appraisal, # 5 Supplement Request for Hearing, # 6 Proposed Order Proposed Order) (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	11	Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	12	NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012)
03/08/2012	13	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/08/2012)
03/08/2012	14	ORDER OF DISMISSAL *(Sua Sponte)* re: 10 EMERGENCY MOTION, 11 Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/08/2012)
03/09/2012	15	Plaintiff's Answer to 11 Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebernetsky,) (Entered: 03/12/2012)
03/12/2012	16	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 14 Order of Dismissal, by Candace Louise Curtis (Filing fee $ 455), filed.(mlothmann) (Entered: 03/12/2012)
03/16/2012	17	Notice of Assignment of USCA No. 12-20164 re: 16 Notice of Appeal, filed. (sguevara,) (Entered: 03/16/2012)
03/26/2012	18	Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: 16 Notice of Appeal, filed. (Attachments: # 1 Order Dismissal, # 2 Notice of Appeal, # 3 Docket sheet, # 4 Motion IFP)(lfilmore,) (Entered: 03/26/2012)
03/30/2012		USCA Appeal Fees received $ 455, receipt number HOU022939 re: 16 Notice of Appeal, filed.(klove,) (Entered: 03/30/2012)
04/12/2012	19	Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: 16 Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012)
04/26/2012		The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: 16 Notice of Appeal USCA No. 12-20164, filed.(blacy,) (Entered: 04/26/2012)

08/16/2012	20	Transmittal Letter on Appeal Certified re: 16 Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler,) (Additional attachment(s) added on 8/17/2012: # 1 UPS Tracking #) (hler,). (Entered: 08/16/2012)
08/20/2012	21	Transmittal Letter on Appeal Certified re: 16 Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lilse Mathews, III, filed.(hler,) (hler,). (Entered: 08/20/2012)
02/05/2013	22	JUDGMENT of USCA for the Fifth Circuit re: 16 Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav,) (Entered: 02/05/2013)
02/05/2013	23	Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav,) (Entered: 02/05/2013)
02/05/2013	24	OPINION of USCA for the Fifth Circuit re: 16 Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav,) (Entered: 02/05/2013)
02/06/2013	25	NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios,) (Entered: 02/06/2013)
02/17/2013	26	NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 02/17/2013)
02/19/2013	27	ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for 3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013)
02/20/2013	28	ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 02/20/2013)
03/01/2013	29	ANSWER to 1 Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013)
03/05/2013	30	Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock,) (Entered: 03/05/2013)

03/11/2013	31	CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps,) (Entered: 03/11/2013)
03/14/2013	32	REPLY to 29 Answer to Complaint, filed by Candace Louise Curtis. (sclement,) (Entered: 03/20/2013)
03/14/2013	33	CERTIFICATE OF SERVICE of 32 Reply by Candace Louise Curtis, filed.(sclement,) (Entered: 03/20/2013)
03/14/2013	34	AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed. (sclement,) (Entered: 03/20/2013)
03/14/2013	35	Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement,) (Additional attachment(s) added on 3/20/2013: # 1 Proposed Order) (sclement,). (Entered: 03/20/2013)
03/14/2013	36	EXHIBITS re: 35 MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement,) (Entered: 03/20/2013)
03/22/2013	37	NOTICE of Setting as to 35 MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013)
03/29/2013		***Plaintiff's email request to appear telephonically at the Injunction hearing set for April 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013)
04/01/2013	38	Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps,) (Entered: 04/02/2013)
04/04/2013	39	RESPONSE in Opposition to 35 MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/04/2013)
04/09/2013	40	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resloving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace,) (Entered: 04/09/2013)
04/09/2013	42	Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013)
04/10/2013	41	NOTICE *of filing of state court lawsuit against parties* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013)
04/11/2013	43	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # 1 Proposed

		Order)(Vie, George) (Entered: 04/11/2013)
04/11/2013	44	ORDER granting 43 Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013)
04/19/2013	45	MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013)
04/19/2013	46	NOTICE *of Agreed CPA Firm pursuant to Court's Order for Accounting* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013)
04/29/2013	47	ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013)
05/01/2013	48	**STRICKEN Per # 57** Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor,) (Entered: 05/01/2013)
05/01/2013	49	MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013)
05/01/2013	50	Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # 1 Exhibit, # 2 Exhibit)(olindor) (Entered: 05/01/2013)
05/01/2013	51	NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. (ccarnew,) (Entered: 05/08/2013)
05/01/2013	52	NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew,) (Entered: 05/08/2013)
05/01/2013	53	NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013)
05/01/2013	54	Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013)
05/09/2013	55	ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting 47 .(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/09/2013)
05/21/2013	56	RESPONSE in Opposition to 49 MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 05/21/2013)

05/22/2013	57	ORDER denying 49 Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint 48 was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 05/22/2013)
06/06/2013	58	MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # 1 Appendix Exhibits 1 and 2, # 2 Proposed Order)(Vie, George) (Entered: 06/06/2013)
06/10/2013	59	ORDER granting 58 Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013)
07/15/2013	60	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013)
08/05/2013	61	ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013)
08/08/2013	62	NOTICE - *Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013* re: 55 Order, 61 Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013)
08/08/2013	63	Sealed Event, filed. (Entered: 08/08/2013)
08/26/2013	64	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 08/26/2013)
08/27/2013	65	MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 08/27/2013)
08/27/2013	66	ORDER granting 64 Defendant's Motion for Approval of Disbursements to Pay Property Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013)
08/27/2013	67	RESPONSE *to Report of Master*, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Appendix Tab 1, # 2 Appendix Tab 2)(Vie, George) (Entered: 08/27/2013)
08/28/2013	68	ORDER for Expedited Response; Motion-related deadline set re: 65 MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties

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		notified.(chorace) (Entered: 08/28/2013)
08/29/2013	69	RESPONSE to 62 Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # 1 Proposed Order, # 2 Proposed Order). (CD filed in Clerks Office.) (sscotch,) (Entered: 08/29/2013)
08/29/2013	70	This document is a duplicate of DE 69 ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # 1 Proposed Order, # 2 Proposed Order)(sscotch,) (Entered: 08/29/2013)
08/30/2013	71	PROPOSED ORDER re: 67 Response, filed.(Vie, George) (Entered: 08/30/2013)
09/03/2013	72	OBJECTIONS to 65 MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps,) (Entered: 09/03/2013)
09/03/2013	73	OBJECTIONS to 62 Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps,) (Entered: 09/03/2013)
09/03/2013	74	Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013)
09/03/2013	75	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed.(chorace) (Entered: 09/03/2013)
09/03/2013	76	NOTICE of Setting as to 74 MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013)
09/03/2013	77	ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/03/2013	78	ORDER granting 65 Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/18/2013	79	TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner,) (Entered: 09/18/2013)
09/19/2013	80	Notice of Filing of Official Transcript as to 79 Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/19/2013)
09/23/2013	81	NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt,

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		filed. (chorace) (Entered: 09/23/2013)
09/23/2013	82	RESPONSE in Opposition to 74 MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Appendix)(Vie, George) (Entered: 09/23/2013)
09/23/2013	83	PROPOSED ORDER re: 82 Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013)
09/27/2013	84	TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013)
09/30/2013	85	Notice of Filing of Official Transcript as to 84 Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013)
10/02/2013	86	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013)
10/03/2013	87	ORDER denying 74 Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013)
11/08/2013	88	MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # 1 Appendix Invoice, # 2 Proposed Order)(Vie, George) (Entered: 11/08/2013)
11/12/2013	89	ORDER granting 88 Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013)
12/05/2013	90	PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # 1 Proposed Order)(sbejarano, 1) (Entered: 12/06/2013)
12/12/2013	91	NOTICE of Setting as to 90 MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013)
12/18/2013	92	RESPONSE to 90 MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 12/18/2013)
12/18/2013	94	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014)

12/30/2013	93	Agreed PROPOSED ORDER re: 90 MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # 1 Proposed Order Agreed proposed order)(Vie, George) (Entered: 12/30/2013)
01/06/2014	95	NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014)
01/06/2014	96	AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014)
02/24/2014	97	NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014)
02/28/2014	98	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014)
03/08/2014	99	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # 1 Appendix Exhibit A, # 2 Proposed Order)(Vie, George) (Entered: 03/08/2014)
03/10/2014	100	Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills 99 Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified.(sclement, 4) (Entered: 03/10/2014)
03/26/2014	101	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 03/26/2014)
03/27/2014	102	ORDER granting 101 Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014)
04/15/2014	103	MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/15/2014)
04/16/2014	104	ORDER granting 103 Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014)
04/22/2014	105	MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/22/2014)

04/22/2014	106	ORDER granting 105 Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014)
05/09/2014	107	Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # 1 Exhibit Exhibit A)(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	108	First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	109	Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014)
05/12/2014	110	Unopposed PROPOSED ORDER *Granting Motion for Leave to File First Amended Petion* re: 107 Unopposed MOTION for Leave to File First Amended Petition, filed. (Ostrom, Jason) (Entered: 05/12/2014)
05/15/2014	111	ORDER granting 107 Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
05/15/2014	112	ORDER granting 109 Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
07/25/2016	113	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # 1 Letter, # 2 Proposed Order) (chorace) (Entered: 07/28/2016)
07/29/2016	114	ORDER denying 113 Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016)
08/03/2016	115	Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # 1 Proposed Order) (dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	117	Other EXHIBITS re: 115 MOTION., filed. (Attachments: # 1 Continuation of Exhibits, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	118	Other EXHIBITS re: 115 MOTION by Candace Louise Curtis., filed. (Attachments: # 1 Exhibits Continue, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation, # 14 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	119	Other EXHIBITS re: 115 MOTION by Candace Louise Curtis., filed. (Attachments: # 1 Exhibits Continue, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation,

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		# 10 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	116	Other EXHIBITS re: 115 MOTION., filed. (Attachments: # 1 Exhibits, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	120	Plaintiff Candance Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # 1 Exhibit Transcript, # 2 Exhibit)(mxperez, 5) (Entered: 08/09/2016)
08/10/2016	121	PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016)
08/10/2016	122	PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # 1 Proposed Order)(szellers, 7) (Entered: 08/11/2016)

PACER Service Center

Transaction Receipt

11/14/2016 07:03:15

PACER Login:	cl4635:3890596:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:12-cv-00592
Billable Pages:	10	**Cost:**	1.00

17-20360.3079

PROBATE COURT 4
FILED
1/19/2016 11:19:16 AM
Stan Stanart
County Clerk
Harris County

No. 412,249

IN THE ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING	§	NUMBER FOUR (4)
DECEASED	§	HARRIS COUNTY, TEXAS

FIRST SUPPLEMENT TO REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST

On January 14, 2016 the REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST (the "Report") was filed in the above styled Decedent's estate. This is the first supplement to the Report.

Trustees of the Brunsting Family Living Trust

On July 1, 2008 an Appointment of Successor Trustees was executed by Nelva Erleen Brunsting, also known as Nelva E. Brunsting, pursuant to Article IV. Section B. of the Brunsting Family Living Trust. This document appointed Carl Henry Brunsting and Anita Kay Brunsting as successor co-trustees if Nelva E. Brunsting fails or ceases to serve. If either Carl Henry Brunsting or Anita Kay Brunsting should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then The Frost National Bank shall serve as the sole successor trustee. A copy of the Appointment of Successor Trustees is attached hereto as the first exhibit to first supplement.

In all other respects the Report filed on January 14, 2016 remains the same.

Nelva Brunsting
13630 Pinerock Ln.
Houston, TX 77079

Candy Curtis,
1215 Virginian Way
Martinez, CA
94553

Wes Sunday

Its almost 10pm but I'm not sleepy and my computer wont cooperate tonite.

So I heard you were concerned that any money you receive after I "leave this mortal coil" will be put in a trust and Greta would have to deal it out.

That not true. You will get whatever share is yours. If you don't know how to manage money by now its too late.

I'm on ebay quite a bit of the time now. Even sleep with it. The hum of the motor is rather soothing.

Had about 30 on so tonight this evening. Time to take the dog doing the goodies out. Our weather is still gorgeous but so very dry. Glad I'm not a farmer. I'm a farmer are doing better.

I'm watching the World Series. Looks like your guys are winning.

Aren't those odds pretty? You get them for me.

Love,

get a lap desk. I guess I'm too lazy to sit at the desk. I usually write while watching TV at nite.

Wish I had gave lovely handwriting. I started out left handed but my 1st gr. Teacher made me write right handed so I ~~[illegible]~~ blame her.

Hallmark
STATIONERY
CNT3025
© HALLMARK LICENSING, INC.
MADE IN U.S.A.
Hallmark.com

I can't even read my own writing.)

Bye now. Love, Mother

DATA-ENTRY
PICK UP THIS DATE

FILED
2/6/2015 10:56:10 AM
Stan Stanart
County Clerk
Harris County

PROBATE COURT 4

CAUSE NO. 412,249-402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files certified copies of an Injunction and Report of Master and would show the Court as follows:

1.

Plaintiff originally filed her Original Petition in the United States District Court for the Souther District of Texas, Houston Division, under Civil Action No. 4:12-CV-592. On April 19, 2013, the United States District Court entered a Memorandum and Order Preliminary Injunction in which it found that Anita Kay Brunsting and Amy Ruth Brunsting as Trustees had failed to act in accordance with the duties required by the Trust and enjoined them from disbursing any funds from any Trust accounts without prior permission of the court. *See* Ex. A, Memorandum and Order Preliminary Injunction. In that same order, the court determined to appoint an independent firm or account to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. *See* Ex A, Memorandum and Order Preliminary Injunction. Ultimately court appointed CPA William G. West filed his Report of Master dated July 31, 2013. *See* Ex. B, Report of Master.

2.

On May 15, 2014, the United States District Court entered an order transferring Civil Action 4:12-CV-00592 into Harris County Probate Court Number Four, Cause Number 412,249. *See* Ex.

02102015:0838:P0134
02112015:1339:P0002
UNOFFICIAL COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed on November 7, 2016, by Defendant Gregory Lester in the above styled cause (Dkt 83), should be Denied.

It is SO ORDERED

_____
Date

_____
The Honorable Alfred H Bennet
United Stated District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Candace Louise Curtis, et al.

v. Case Number: 4:16−cv−01969

Candace Kunz−Freed, et al.

NOTICE OF SETTING

TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.

Before the Honorable

Alfred H Bennett

PLACE: Courtroom 8C
United States District Court
515 Rusk Avenue
Houston, Texas 77002

DATE: 12/15/2016

TIME: 11:30 AM

TYPE OF PROCEEDING: Motion Hearing

Date: November 30, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

PLAINTIFFS' RESPONSE TO DEFENDANT DARLENE PAYNE-SMITH"S FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) and 12(b)(6) MOTION TO DISMISS

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I. Introduction

1. Plaintiffs filed 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) claims along with civil rights, common law breach of fiduciary and other claims on July 5, 2016.

2. On November 10, 2016, Defendant Darlene Payne-Smith filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) (Dkt 84).

II. Defendants Issues

A. Plaintiffs' Claims Should be Dismissed for Lack of Subject Matter Jurisdiction

1. Standard of Review

2. Plaintiffs' Purported Injuries are Speculative, Contingent and Not Ripe

3. Munson Has No Direct Stake in the Outcome of this Case and Lacks Article III Standing

4. Plaintiffs' State Law Non-Predicate Act Claims are Barred by Attorney Immunity.

B. Plaintiffs' Claims Should be Dismissed for Failure to State a Claim upon Which Relief May be Granted

1. Standard of Review

2. Plaintiffs Lack Statutory Standing under RICO

a. Plaintiffs Lack a Direct, Concrete Injury-in-Fact

b. Defendant Smith did not Proximately Cause Any of Plaintiffs' "Injuries."

3. Plaintiffs Have Failed to Plead the Substantive Elements of a Civil RICO Claim.

a. Plaintiffs Have Not Alleged the Existence of an "Enterprise,"

(i) "Probate Court No. 4" is Not a Legal Entity

(ii) Plaintiffs Have Not Alleged an Association-in-Fact Enterprise

b. Plaintiffs Have Not Alleged a "Pattern" of Racketeering Activity.

c. Plaintiffs Have Not Plausibly Alleged a Conspiracy Under § 1692(d)

4. Plaintiffs' Non-Predicate Act Claims Alleging Violations of Sections 1983, 1985 and 242 Should All be Dismissed.

a. Plaintiffs' Section 1983 Claim Should be Dismissed.

(i) Plaintiffs Do Not Identify Any Particular Constitutionally-Protected Rights

(ii) Plaintiffs Have Not Alleged State Action

b. Plaintiffs' Section 1985 Claim Should be Dismissed.

c. Section 242 Does Not Provide for a Private Right of Action.

III. STANDARDS OF REVIEW

3. Plaintiffs incorporate and adopt by reference the Standards of Review in Section II of their Reply (Dkt 33) to the Motions to Dismiss filed by Defendants Albert Vacek Jr. and Candace Kunz-Freed. (Dkt 19 & 20)

IV. PLAINTIFFS' ARGUMENT

Summary of Plaintiffs' Argument

4. An "Estate" is an abstraction of the mind that only exists in contemplation of rights in property. An "Estate" is not a legal entity and not a proper party to litigation. An estate can only act through its legal representative.

5. Fifteen Motions to Dismiss have been filed in this case and all fifteen motions claim "Probate Matter" or "Probate Case", yet there is not a single mention of the Wills of Elmer or Nelva Brunsting.

6. On January 12, 2005, the "Brunsting Family Trust" (Dkt 33-2) was restated. The Wills, signed at the same time, devise, bequeath and transfer all right, title and interest to property of any kind to the "Brunsting Trust". (Dkt 41-3 and 41-4)

7. Article III states in part:

> *"I direct that no action be required in the county or probate court in relation to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law."*

8. This list of acts was completed March 27, 2013 (Dkt 41-7) and "Probate" of the "Estates" was dropped from Calendar (Dkt 41-5 and 41-6) four days before Defendant Bobbie Bayless filed her "Probate Matter". (Dkt 33-6)

9. Carl's second application for letters testamentary was filed October 17, 2014, (Dkt 41-8) fourteen months after the Drop Order (Dkt 41-5 and 41-6), and five months after the remand of the "Trust Matter" from the federal Court.

The Assertion of Contrary Facts

10. In the second unnumbered paragraph on page 1 under "Introduction" Defendant makes the following fact claims:

> *"This is the most recent in a series of lawsuits involving the Brunsting siblings, all of which emanate from a state court probate proceeding, In re: Estate of Nelva E. Brunsting, which is pending under Cause No. 412.249 in Probate Court No. 4, Harris County, Texas (the "Brunsting Probate Case")."*

11. Defendant goes on to add an entire paragraph in footnote 1 adopting the adverse statement of facts contained in Vacek and Freed's Rule 12(b)(1) Motion to Dismiss. (Dkt 20)

12. However, Vacek and Freed's Rule 12(b)(1) Motion to Dismiss adopts the statement of facts in their Rule 12(b)(6) Motion to Dismiss (Dkt 19), but those claims of fact are adverse to those contained in the complaint and may not be considered under 12(b)(6).

13. In order to overcome the presumptions in favor of the Plaintiffs' claim of facts under 12(b)(1), a Defendant must support their claim of conflicting facts with matters outside the pleadings such as testimony and affidavits.

14. Defendant's claims of contrary facts are not cognizable under Rule 12(b)(1), as there are no affidavits or exhibits attached to Docket entries 19, 20 or 84, and there are no references to the record of any proceedings. Defendant's claims of contrary facts are not cognizable under

Rule 12(b)(1) or 12(b)(6). Moreover, the asserted facts are patently false and cannot be defended against the public record.

V. The History and Nature of the Claims as Documented In the Public Record

15. A properly supported history of the "*Series of lawsuits involving the Brunsting siblings*" begins with:

1. Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100, CA 4:12-cv-592 filed TXSD February 27, 2012. The docket sheet for that case is attached as Exhibit 1.[1] The CA 4:12-cv-592 matter was dismissed sua sponte under the "Probate Exception to Federal Diversity Jurisdiction" March 8, 2012. (Exhibit 1 entry 13)

2. On March 9, 2012, Defendant Bobbie Bayless filed a Petition to take depositions before Suit in the Harris County District Court. (Exhibit 2)

3. On January 9, 2013, The Fifth Circuit Court of Appeals in Case Number 12-20164, issued a unanimous Opinion with Reverse and Remand, published Curtis v Brunsting et al, 704 F.3d 406. (Dkt 34-4) The Circuit Court held: 1) Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100, CA 4:12-cv-592 is a lawsuit relating only to the administration of inter vivos trusts, 2) assets in an inter vivos trust are not property belonging to an estate, 3) the Brunsting Trusts were not in the custody of a state court, 4) was not subject to probate administration and, 5) did not come within the purview of the probate exception to federal diversity jurisdiction. (Dkt 34-4)

4. On January 29, 2013, Defendant Bobbie Bayless filed malpractice and breach of fiduciary claims against Vacek and Freed in the Harris County District Court in the name

[1] Plaintiff Munson's name appears at entries 9 and 38.

of "Carl Henry Brunsting Independent Executor of the Estates of Elmer and Nelva Brunsting. (Dkt 33-9)

5. On April 9, 2013, the Honorable Kenneth Hoyt issued an injunction in Candace Louise Curtis vs. Anita and Amy Brunsting, CA 4:12-cv-592, (Dkt 26-2) and on the same date, April 9, 2013:

6. Defendant Bobbie Bayless filed lawsuits against Anita, Amy and Carole Brunsting, and Candace Curtis, in Harris County Probate Court Number 4. This is the phenomenon Defendants refer to as "The Probate Matter". The "Probate Matter" docket sheets are attached as Exhibits 3, 4, 5 and 6.

7. Upon being named a Defendant in Bayless "Probate Matter' Carole retained Darlene Payne-Smith and on May 6, 2013 Payne-Smith filed a Counter suit against Carl Brunsting for interfering with Carole's "Inheritance expectancy".[2]

16. Carole Ann Brunsting has never had fiduciary duties in regard to the Brunsting Trusts.

17. Carole Brunsting held Nelva Brunsting's Medical Power of Attorney and her duties were to Nelva's personal and medical care. That role and the subsequent conduct of the Defendant "legal professionals" would be consistent with the unsuspecting sibling medical POA role in the classic hustle fully explained in "How to Steal your Family Inheritance". (Exhibit 7)

18. Plaintiff Candace Curtis has been obstructed from the performance of her fiduciary duties, and the pursuit of claims belonging to the Trusts, by Trustees de son tort, Anita and Amy Brunsting and these other Defendants in concert efforts.

VI. STANDING

19. Defendant Darlene Payne-Smith argues that the matter before the Court is:

[2] Harris County Probate Document No. PBT-2013-146160

> *"the most recent in a series of lawsuits involving the Brunsting siblings, all of which emanate from a state court probate proceeding, In re: Estate of Nelva E. Brunsting"*

The Brunsting Wills

20. Every one of these Defendants argued that the RICO action before the Court stems from a "Probate Matter" pending in Harris County Probate Court No. 4, and yet not a single one of those Motions (Dkt 19, 20, 23, 25, 30, 35, 36, 39, 40, 53, 78, 81, 83 or 84) mentions the Wills of Elmer or Nelva Brunsting. (Dkt 41-3 and 41-4)

21. Not a single one of the Motions identifies an heir to any estate and not a single one of the Motions identifies any assets belonging to an "Estate".

22. The Will of Nelva Brunsting says in Articles II and III:

> *II.*
>
> *"I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust;…"*
>
> *"All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration."*
>
> *III.*
>
> *…"I direct that no action be required in the county or probate court in relation to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law."*

23. Under Section H. "Protection of Beneficiaries":

> *"No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary."*

24. The Fifth Circuit Court of Appeals did read the Wills and did determine that the only heir to the Estates of Elmer and Nelva Brunsting is "The Trust".

25. Plaintiffs find no indication that any of the Brunsting siblings have challenged either Will, and it would necessarily follow that neither Carl Brunsting, nor any Brunsting sibling, has individual standing in any administration of the "Estate of Nelva Brunsting", a.k.a. the "Brunsting Probate Matter". Let us look at that opening paragraph again.

> *"This is the most recent in a series of lawsuits involving the Brunsting siblings, all of which emanate from a state court probate proceeding, In re: Estate of Nelva E. Brunsting, which is pending under Cause No. 412.249 in Probate Court No. 4, Harris County, Texas (the "Brunsting Probate Case").*"

26. An "Estate", is not a legal entity but an abstraction that only exists in contemplation of rights in property, in whatever form. A Decedent's estate is the sum of the person's assets – legal rights, interests and entitlements to property of any kind' at the time of their death.

27. As noted by the Fifth Circuit and as can be seen in reading the Wills, the assets in the Brunsting Trusts are not assets belonging to either Founders Estate, and all of the Brunstings' interest in property, whether real or personal, had been appointed and transferred to the Trust at the time of the Restatement in 2005.

28. As the assets in the Brunsting Trusts are not property belonging to an estate, those Trusts are not subject to probate administration.

Gaming the Judicial Process

29. Defendant Bayless filed her suit in Harris County Probate No. 4, in the name of Carl Henry Brunsting "Individually and as Executor of the Estates of Elmer and Nelva Brunsting" raising only trust related claims, knowing the Brunsting Trusts were in the custody of a federal Court and that a federal Court had issued an injunction involving the Brunsting trusts that same day.

30. Having begun depositions before suit more than a year earlier and having read the Wills, Bayless knew or should have known that Carl Brunsting had no individual standing in the administration of any estate.

31. Bayless would also know that the trust, not being an asset belonging to any estate, would not be subject to probate and, as the Wills bequeath and direct all rights in property to "the Trust" to be disposed of under the terms of the trust, it would follow Bayless knew the estate had no right of claims relating to Trust assets. In any event, she had a duty to know.

VII. ENTER THE VEXATIOUS MULTIPLIER - DARLENE PAYNE-SMITH

32. Bayless' suit, brought in the name of Carl Brunsting individually, and in the name of the "Estate of Nelva Brunsting", involving exclusively trust related claims, names all four of the other Brunsting siblings defendants, including federal Plaintiff Curtis.

33. Carole retained Defendant Darlene Payne-Smith and rather than point out the obvious, that the "Estate" owned no property, had no property interests in the Brunsting Trusts, and that Carl, not being an heir, had no individual standing to bring any "Probate Matter", none-the-less filed a counter-suit against Carl Brunsting for tortious interference with "inheritance expectancy", which is an interest none of the Brunsting siblings have in the probate of any "estate".

34. The Brunsting trusts are the only real party in interest to all matters involving trust property, and all of the Defendants' Motion to Dismiss have confessed to what they are charged with, attempting to loot an inter vivos trust under the pretext of administering a probate estate. In the process they have multiplied the litigation and the injuries exponentially.

Motions for Distributions in "Estate of Nelva Brunsting"

35. After Defendant Jason Ostrom arranged a remand of the federal case of Curtis v Brunsting 4:12-cv-592 to Harris County Probate, he immediately filed an unauthorized "Second Amended Complaint" (Dkt 34-9) in "Estate of Nelva Brunsting" and followed with application for a distribution of $45,000 to pay his fees (Dkt 62-1), also in "Estate of Nelva Brunsting". That ridiculous excuse for litigation spawned a flurry of vexatious objections from all the other "Probate Matter' poser advocates.

36. Rather than point out the obvious, that there are no assets in the "Estate", all of the Defendant attorneys joined in with objections pointing to the trust this and the trust that, generating hundreds of pages, never once mentioning the wills, standing or identifying an heir. (Exhibits 8-10).

37. On page 1 and 2 of an objection to a second application for distribution filed by Defendant Ostrom in "Estate of Nelva Brunsting", Defendant Payne-Smith had these alleged fact assertions to offer: (Exhibit 8) (emphasis added)

> *"1. Plaintiff, acting pro se, first filed her suit against her siblings, Anita Brunsting and Amy Brunsting, regarding the Trust in United States District Court for the Southern District of Texas.*
>
> *Plaintiff's Petition was filed in federal court in bad faith, without just cause, and frivolously as Plaintiff knew there was already litigation pending in this Court on the same and/or similar Trust issues and involving the same parties and did so without representation to the detriment of everyone else involved in this case. Plaintiff's frivolous filing in federal court caused the other parties in this case to incur substantial unnecessary expenses defending against the suit, attending needless hearings in federal court on issues already before this Court, and responding to Plaintiffs relentless and unsuccessful attempts to represent herself. Plaintiff wasted so much time and money attempting to represent herself in federal court that she was ordered by federal Judge Kenneth M. Hoyt to obtain legal counsel."*
>
> *"2. On April 19,2013, Judge Hoyt enjoined the Trustees from disbursing any funds from any Trust accounts without the Court's permission. Plaintiffs suit was*

then transferred to this Court on June 4, 2014, pursuant to an Order of Remand entered by Judge Hoyt, and Plaintiff amended her Petition to include Carol Brunsting as a defendant. The injunction stands to this day."

VIII. RICO - INJURY IN FACT, PROXIMATE CAUSE AND STANDING

February 2012 to August 2014 in the Federal Court

38. Plaintiffs are informed and believe that an estimated $20,000 in fees were paid to attorneys by Brunsting interests, in connection with the federal case of Curtis v Brunsting 4:12-cv-592, between February 2012 and the August 2014 mediation.[3]

February 2012 to August 2014 in State Courts

39. Plaintiffs are informed and believe that a very rough estimate of state court claims related fees incurred during this period, based on figures thrown out at the mediation in August 2014, $225,000 to Bayless from Carl's pocket,[4] $37,000 to Mills Shirley paid from the trust – 1/5 of which was Curtis' property and, at a minimum, $30,000 more from each sibling during this same period of time, most likely on credit terms.

August 2014 to December 2016:

40. The estimated totals for state court actions between February 2012 and August 2014, as shown above, is approximately $412,000. That is approximately $13,733 per month for that thirty month period.

41. If we use that value as the basis and multiply by the 28 months between August 2014 and December 2016, our total for that period equals approximately $384,533.

[3] These numbers do not reflect the federal appeal.

[4] Carl Brunstings' Deposition testimony (Exhibit 11 Carl deposition page 78 line14)

42. Thus, the total estimated attorney fees for the "Probate Matter", which includes the Harris County District Court case, is $796,533. While grossly underestimated, this figure is more than absurd considering that nothing substantive was accomplished in any state court.

Injuries to Plaintiffs Curtis and Munson, are both Personal and Pecuniary

43. When Plaintiff Curtis was forced to file a pro se lawsuit in the Southern District of Texas to defend her rights in property from her sisters Anita and Amy Brunsting, She had to pay the filing and service of process fees. Neither Munson nor Curtis had ever filed a lawsuit in any court, but they did the best they could under the circumstances.

44. After the "breach of fiduciary" action was dismissed, Plaintiffs were forced to file a Fifth Circuit Appeal. Neither Munson nor Curtis had ever filed a federal appeal, did not know the process or the rules and neither knew anything about the probate exception. Plaintiffs thus agreed that one had to work to bring home the bacon and one would have to study, inform, write, and teach or in other words, "pull the plow".

45. Curtis agreed that she had the more dependable income and would perform the bread winner function and that Munson had the better understanding of legal concepts and was thus the better suited to the legal research and writing function.

46. Munson was working at the time as both a performing artist and as a Systems Engineer, providing network support for the same Company where Plaintiff Curtis is employed as an accountant. Munson was eventually forced to resign from the network management obligations to focus on protecting Plaintiff Curtis' property interests.

47. There are three conditions in the American system of jurisprudence where an opposing party can be awarded attorney fees under 28 U.S.C. §1927. First, a party who preserves or recovers a fund for the benefit of others (common fund) may recover attorneys' fees from the

fund or from the other parties who benefit from the fund.[5] Second, a party may recover attorneys' fees from an opposing party when the opposing party or the opposing party's attorney has disobeyed a court order,[6] and third, a party may recover attorneys' fees from an opposing party when the opposing party acts in bad faith.[7] All three of these criteria are met in this case.

48. If not for the conduct complained of against Vacek & Freed there would have been no litigation and if not for the participatory conduct of the rest of these defendants the legitimate Trust litigation would have long since been resolved.

49. The Honorable Kenneth Hoyt observed at the injunction hearing April 9, 2013, (Dkt 26-7, page 35 and 36) all that was needed to resolve the trust dispute was to distribute the assets to the beneficiaries, despite Defendants argument that the state court lawsuits were an obstacle to that end.

50. Given that Defendants, Anita and Amy Brunsting have clearly failed to honor the obligations of the office of trustee, are accused of malfeasance in the conduct of trust business, have conflicts of interest, and have refused or otherwise failed to pursue claims belonging to the Trusts, Plaintiff Curtis has assumed her proper station as successor trustee, in law and in fact.

51. Plaintiffs Curtis and Munson, through their active defense of the Brunsting Trust interests and the pursuit of claims belonging to the Brunsting Trusts have assumed the vacant office and are entitled to recover fees and costs.

IX. AMENDMENT AND ADOPTION BY REFERENCE

52. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1),

[5] Mills v. Electric Auto-Lite Co., 396 U.S. 375, 390-97 (1970). The Supreme Court in Mills defined the term "common fund" as a fund for the benefit of an entire class, such as an estate.
[6] Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 426-28 (1923); see Alyeska,421 U.S. at 258 (noting that award of attorneys' fees may be part of sanction imposed on party or party's attorney for disobeying court order).
[7] Alyeska Pipeline Serv. Co. v. Wilderness Society, 421 U.S. 240, 257-59 (1975)

the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Responses to Defendants' Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, 85, 86, 87 and this response, as if fully expressed therein.

53. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings, the claims stated therein and the exhibits attached, as exhibits in support of Plaintiffs' Complaint, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, and 84, as if fully attached as exhibits thereto.

X. CONCLUSION

54. As of the filing of this response, the Complaint consists of the entire record before the Court and those Public Records this Honorable Court has been respectfully requested to take judicial notice of under Federal Rule of Evidence §201.

55. The Complaint contains satisfactory allegations with sufficient evidentiary support for the court to conclude 1) predicate acts have been articulated that establish a pattern of racketeering activity, 2) the Probate Court is both the enterprise and a victim of the racketeering conspiracy, 3) Legitimizing the theft of Brunsting Trust assets was the object of the racketeering conspiracy, 4) Defendants each participated in furthering the success of the racketeering conspiracy 5) Plaintiffs were injured in their business and property interests directly and proximately caused by the racketeering conspiracy 6) the racketeering activity is ongoing and continuous and the Brunstings are only one of many families victimized by the racketeering activities, 7) without the intervention of this Court the conduct complained of will continue unabated and other members of society will suffer injury directly and proximately caused by the same persons, the same racketeering conduct and 8) Plaintiffs claims are over-ripe for remedy.

56. Plaintiffs have sufficiently pled that:

(1) defendants:

(2) through commission of two of the enumerated predicate acts,

(3) which constitute a "pattern" of

(4) "racketeering activity,"

(5) directly or indirectly participates in the conduct of

(6) an "enterprise,"

(7) the activities of which affect interstate or foreign commerce, and that

(8) Plaintiffs have been injured in their business and property interests by reason of such conduct.

57. It has already been shown that participants need not have personally committed any predicate acts and that aiding and abetting by providing substantial assistance to the perpetrators in furtherance of a racketeering conspiracy is sufficient.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) and Rule 12(b)(1) Motion to Dismiss filed by Defendant Darlene Payne-Smith filed November 10, 2016, and hold to answer.

Respectfully submitted, December 1, 2016

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 1st day of December, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson
Rik W. Munson

CLOSED,REMANDED

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:12-cv-00592

Candace Louise Curtis v. Anita Kay Brunsting et al **Case remanded to Harris County Probate Court No. 4.**
Assigned to: Judge Kenneth M. Hoyt
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012
Date Terminated: 05/15/2014
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Special Master

William West
Accountant

represented by **Timothy Aaron Million**
Hughes Watters Askanase
Total Plaza
1201 Louisiana St., 28th Floor
Houston, TX 77002
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Fax: 713-759-6834
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represented by **Jason B Ostrom**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Carl Brunsting
Necessary Party and Involuntary Plaintiff

represented by **Carl Brunsting**
PRO SE

V.

Defendant

Anita Kay Brunsting

represented by **Bernard Lilse Mathews , III**
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Suite 245

17-20360.3103

Houston, TX 77014
281-580-8100
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TERMINATED: 02/20/2013
LEAD ATTORNEY
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George William Vie , III
Mills Shirley LLP
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Suite 400
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713-571-4232
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Email: gwv_order@millsshirley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Amy Ruth Brunsting represented by **Bernard Lilse Mathews , III**
(See above for address)
TERMINATED: 02/20/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

George William Vie , III
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Does 1-100

Defendant

Carole Ann Brunsting

Defendant

Candace L. Kunz-freed

Defendant

Albert E. Vacek Jr.

Defendant

Vacek & Freed, PLLC

Defendant

17-20360.3104

The Vacek Law Firm PLLC

Defendant

Bernard Lilse Mathews III

Date Filed	#	Docket Text
02/27/2012	1	PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee $ 350) filed by Candace Louise Curtis. (Attachments: # 1 Continuation, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dterrell,) Modified on 2/27/2012 (dterrell,). (Entered: 02/27/2012)
02/27/2012	2	PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012	3	INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	4	REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell,) (Entered: 02/27/2012)
02/27/2012	5	NOTICE by Candace Louise Curtis, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012	6	NOTICE by Candace Louise Curtis, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012		Civil Filing fee re: 1 Complaint,, : $350.00, receipt number CC003143, filed. (dterrell,) (Entered: 02/27/2012)
02/27/2012		Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed.(dterrell,) (Entered: 02/27/2012)
02/28/2012	7	ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus,) (Entered: 02/28/2012)
03/01/2012	8	ORDER denying the application for a temporary restraining order and for injunction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/01/2012)
03/05/2012	9	Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # 1 cover letter) (saustin,) (Entered: 03/05/2012)

17-20360.3105

03/06/2012	10	EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # 1 Affidavit Affidavit of Amy Brunsting, # 2 Exhibit Property Appraisal, # 3 Exhibit Sale Contract, # 4 Exhibit Tax Appraisal, # 5 Supplement Request for Hearing, # 6 Proposed Order Proposed Order) (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	11	Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012)
03/06/2012	12	NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012)
03/08/2012	13	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/08/2012)
03/08/2012	14	ORDER OF DISMISSAL *(Sua Sponte)* re: 10 EMERGENCY MOTION, 11 Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios,) (Entered: 03/08/2012)
03/09/2012	15	Plaintiff's Answer to 11 Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebernetsky,) (Entered: 03/12/2012)
03/12/2012	16	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 14 Order of Dismissal, by Candace Louise Curtis (Filing fee $ 455), filed.(mlothmann) (Entered: 03/12/2012)
03/16/2012	17	Notice of Assignment of USCA No. 12-20164 re: 16 Notice of Appeal, filed. (sguevara,) (Entered: 03/16/2012)
03/26/2012	18	Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: 16 Notice of Appeal, filed. (Attachments: # 1 Order Dismissal, # 2 Notice of Appeal, # 3 Docket sheet, # 4 Motion IFP)(lfilmore,) (Entered: 03/26/2012)
03/30/2012		USCA Appeal Fees received $ 455, receipt number HOU022939 re: 16 Notice of Appeal, filed.(klove,) (Entered: 03/30/2012)
04/12/2012	19	Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: 16 Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012)
04/26/2012		The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: 16 Notice of Appeal USCA No. 12-20164, filed.(blacy,) (Entered: 04/26/2012)

08/16/2012	20	Transmittal Letter on Appeal Certified re: 16 Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler,) (Additional attachment(s) added on 8/17/2012: # 1 UPS Tracking #) (hler,). (Entered: 08/16/2012)
08/20/2012	21	Transmittal Letter on Appeal Certified re: 16 Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lilse Mathews, III, filed.(hler,) (hler,). (Entered: 08/20/2012)
02/05/2013	22	JUDGMENT of USCA for the Fifth Circuit re: 16 Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav,) (Entered: 02/05/2013)
02/05/2013	23	Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav,) (Entered: 02/05/2013)
02/05/2013	24	OPINION of USCA for the Fifth Circuit re: 16 Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav,) (Entered: 02/05/2013)
02/06/2013	25	NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios,) (Entered: 02/06/2013)
02/17/2013	26	NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 02/17/2013)
02/19/2013	27	ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for 3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013)
02/20/2013	28	ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 02/20/2013)
03/01/2013	29	ANSWER to 1 Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013)
03/05/2013	30	Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock,) (Entered: 03/05/2013)

03/11/2013	31	CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps,) (Entered: 03/11/2013)
03/14/2013	32	REPLY to 29 Answer to Complaint, filed by Candace Louise Curtis. (sclement,) (Entered: 03/20/2013)
03/14/2013	33	CERTIFICATE OF SERVICE of 32 Reply by Candace Louise Curtis, filed.(sclement,) (Entered: 03/20/2013)
03/14/2013	34	AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed. (sclement,) (Entered: 03/20/2013)
03/14/2013	35	Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement,) (Additional attachment(s) added on 3/20/2013: # 1 Proposed Order) (sclement,). (Entered: 03/20/2013)
03/14/2013	36	EXHIBITS re: 35 MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement,) (Entered: 03/20/2013)
03/22/2013	37	NOTICE of Setting as to 35 MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013)
03/29/2013		***Plaintiff's email request to appear telephonically at the Injunction hearing set for April 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013)
04/01/2013	38	Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps,) (Entered: 04/02/2013)
04/04/2013	39	RESPONSE in Opposition to 35 MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/04/2013)
04/09/2013	40	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resloving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace,) (Entered: 04/09/2013)
04/09/2013	42	Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013)
04/10/2013	41	NOTICE *of filing of state court lawsuit against parties* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013)
04/11/2013	43	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # 1 Proposed

		Order)(Vie, George) (Entered: 04/11/2013)
04/11/2013	44	ORDER granting 43 Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013)
04/19/2013	45	MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013)
04/19/2013	46	NOTICE *of Agreed CPA Firm pursuant to Court's Order for Accounting* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013)
04/29/2013	47	ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013)
05/01/2013	48	**STRICKEN Per # 57** Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor,) (Entered: 05/01/2013)
05/01/2013	49	MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013)
05/01/2013	50	Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # 1 Exhibit, # 2 Exhibit)(olindor) (Entered: 05/01/2013)
05/01/2013	51	NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. (ccarnew,) (Entered: 05/08/2013)
05/01/2013	52	NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew,) (Entered: 05/08/2013)
05/01/2013	53	NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013)
05/01/2013	54	Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013)
05/09/2013	55	ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting 47 .(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/09/2013)
05/21/2013	56	RESPONSE in Opposition to 49 MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 05/21/2013)

05/22/2013	57	ORDER denying 49 Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint 48 was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 05/22/2013)
06/06/2013	58	MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # 1 Appendix Exhibits 1 and 2, # 2 Proposed Order)(Vie, George) (Entered: 06/06/2013)
06/10/2013	59	ORDER granting 58 Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013)
07/15/2013	60	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013)
08/05/2013	61	ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013)
08/08/2013	62	NOTICE - *Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013* re: 55 Order, 61 Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013)
08/08/2013	63	Sealed Event, filed. (Entered: 08/08/2013)
08/26/2013	64	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 08/26/2013)
08/27/2013	65	MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 08/27/2013)
08/27/2013	66	ORDER granting 64 Defendant's Motion for Approval of Disbursements to Pay Property Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013)
08/27/2013	67	RESPONSE *to Report of Master*, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Appendix Tab 1, # 2 Appendix Tab 2)(Vie, George) (Entered: 08/27/2013)
08/28/2013	68	ORDER for Expedited Response; Motion-related deadline set re: 65 MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties

		notified.(chorace) (Entered: 08/28/2013)
08/29/2013	69	RESPONSE to 62 Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # 1 Proposed Order, # 2 Proposed Order). (CD filed in Clerks Office.) (sscotch,) (Entered: 08/29/2013)
08/29/2013	70	This document is a duplicate of DE 69 ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # 1 Proposed Order, # 2 Proposed Order)(sscotch,) (Entered: 08/29/2013)
08/30/2013	71	PROPOSED ORDER re: 67 Response, filed.(Vie, George) (Entered: 08/30/2013)
09/03/2013	72	OBJECTIONS to 65 MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps,) (Entered: 09/03/2013)
09/03/2013	73	OBJECTIONS to 62 Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps,) (Entered: 09/03/2013)
09/03/2013	74	Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013)
09/03/2013	75	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed.(chorace) (Entered: 09/03/2013)
09/03/2013	76	NOTICE of Setting as to 74 MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013)
09/03/2013	77	ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/03/2013	78	ORDER granting 65 Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013)
09/18/2013	79	TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner,) (Entered: 09/18/2013)
09/19/2013	80	Notice of Filing of Official Transcript as to 79 Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/19/2013)
09/23/2013	81	NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt,

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		filed. (chorace) (Entered: 09/23/2013)
09/23/2013	82	RESPONSE in Opposition to 74 MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Appendix)(Vie, George) (Entered: 09/23/2013)
09/23/2013	83	PROPOSED ORDER re: 82 Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013)
09/27/2013	84	TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013)
09/30/2013	85	Notice of Filing of Official Transcript as to 84 Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013)
10/02/2013	86	Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013)
10/03/2013	87	ORDER denying 74 Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013)
11/08/2013	88	MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # 1 Appendix Invoice, # 2 Proposed Order)(Vie, George) (Entered: 11/08/2013)
11/12/2013	89	ORDER granting 88 Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013)
12/05/2013	90	PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # 1 Proposed Order)(sbejarano, 1) (Entered: 12/06/2013)
12/12/2013	91	NOTICE of Setting as to 90 MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013)
12/18/2013	92	RESPONSE to 90 MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 12/18/2013)
12/18/2013	94	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014)

12/30/2013	93	Agreed PROPOSED ORDER re: 90 MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # 1 Proposed Order Agreed proposed order)(Vie, George) (Entered: 12/30/2013)
01/06/2014	95	NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014)
01/06/2014	96	AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014)
02/24/2014	97	NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014)
02/28/2014	98	ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014)
03/08/2014	99	MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # 1 Appendix Exhibit A, # 2 Proposed Order)(Vie, George) (Entered: 03/08/2014)
03/10/2014	100	Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills 99 Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified.(sclement, 4) (Entered: 03/10/2014)
03/26/2014	101	MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 03/26/2014)
03/27/2014	102	ORDER granting 101 Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014)
04/15/2014	103	MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/15/2014)
04/16/2014	104	ORDER granting 103 Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014)
04/22/2014	105	MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/22/2014)

04/22/2014	106	ORDER granting 105 Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014)
05/09/2014	107	Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # 1 Exhibit Exhibit A)(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	108	First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014)
05/09/2014	109	Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014)
05/12/2014	110	Unopposed PROPOSED ORDER *Granting Motion for Leave to File First Amended Petion* re: 107 Unopposed MOTION for Leave to File First Amended Petition, filed. (Ostrom, Jason) (Entered: 05/12/2014)
05/15/2014	111	ORDER granting 107 Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
05/15/2014	112	ORDER granting 109 Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014)
07/25/2016	113	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # 1 Letter, # 2 Proposed Order) (chorace) (Entered: 07/28/2016)
07/29/2016	114	ORDER denying 113 Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016)
08/03/2016	115	Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # 1 Proposed Order) (dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	117	Other EXHIBITS re: 115 MOTION., filed. (Attachments: # 1 Continuation of Exhibits, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	118	Other EXHIBITS re: 115 MOTION by Candace Louise Curtis., filed. (Attachments: # 1 Exhibits Continue, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation, # 14 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/03/2016	119	Other EXHIBITS re: 115 MOTION by Candace Louise Curtis., filed. (Attachments: # 1 Exhibits Continue, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation,

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		# 10 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	116	Other EXHIBITS re: 115 MOTION., filed. (Attachments: # 1 Exhibits, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation)(dgonzalez, 5) (Entered: 08/05/2016)
08/05/2016	120	Plaintiff Candance Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # 1 Exhibit Transcript, # 2 Exhibit)(mxperez, 5) (Entered: 08/09/2016)
08/10/2016	121	PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016)
08/10/2016	122	PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # 1 Proposed Order)(szellers, 7) (Entered: 08/11/2016)

PACER Service Center

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PACER Login:	cl4635:3890596:0	**Client Code:**	
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2012 14538

CONFIRMED FILE DATE: 3/9/2012

NO. _____

IN RE: CARL HENRY BRUNSTING	§	**IN THE DISTRICT COURT OF**
	§	
	§	**HARRIS COUNTY, TEXAS**
	§	
	§	80 **JUDICIAL DISTRICT**

RECORDER'S MEMORANDUM
This instrument is of poor quality at the time of imaging

FILED
Chris Daniel
District Clerk
MAR 09 2012
Time: 4:14P
Harris County, Texas
By _____ Deputy

CARL HENRY BRUNSTING'S
VERIFIED PETITION TO TAKE DEPOSITIONS BEFORE SUIT

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, Carl Henry Brunsting ("Petitioner"), asks the court for permission to take depositions by oral examination and/or on written questions to obtain testimony and documents to investigate his potential proceedings involving Anita Kay Brunsting **("Anita"),** Amy Ruth Brunsting **("Amy"),** Vacek & Freed, PLLC **("Vacek"),** and Candace L. Kunz-Freed ("Freed") as authorized by Tex. R. Civ. P. 202.3(a), and in support thereof would show as follows:

1. Petitioner is a resident of Harris County, Texas and is one of the heirs of the estates of his parents, Elmer and Nelva Brunsting, who both resided in Harris County, Texas until their deaths. Petitioner is also one of the beneficiaries of the Brunsting Family Living Trust (the "Family Trust") and other trusts arising therefrom, as well as other trusts and estate planning tools implemented by his parents. Petitioner held a power of attorney for his mother, is the personal representative named in his mother's will, and was previously named to become the successor trustee of the Family Trust upon his mother's death.

2. The parties sought to be deposed and the documents, if any, to be requested of the witnesses are:

A. Vacek, a professional limited liability company formed under the laws of Texas doing business in Harris County, Texas which may be served through its registered agent, Albert E. Vacek, Jr., at 11777 Katy Freeway, Suite 300,

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Probate Search - November 1837 to present

Case Number: 412249
Court: All
File Date (From): MM/DD/YYYY (To): MM/DD/YYYY Search

Clear

Images available from Sept. 1, 1999 to present

Last Name First Name Middle Name
Party Attorney Company Search

228 Record(s) Found.

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1618413	412249-401	04/09/2013	ANCILLARY (LAWSUITS CASES) - CONVERSION		NELVA E. BRUNSTING, DECEASED	Open	CHRISTINE BUTTS	4	Parties

Case	Event Date	Event Desc	Comments							Pgs	
412249-401	10/12/2016	Certificate		35334579	Certificate	4	4	13228882	View		
412249-401	10/12/2016	Application to Dismiss		35334577	Application to Dismiss	11	4	13228881	View		
412249-401	04/07/2016	Legacy Event	ORDERED DARLENE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-112549	23365329	Legacy Event	2	4	10916912	View		
412249-401	03/14/2016	Legacy Event	ORDERED DARLNE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-83225	23311126	Legacy Event	5	4	10889271	View		

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412249-401	03/14/2016	Letter	CAROLE BRUNSTING Film code number PBT-2016-83130	23310902	Letter	2	4	10889179	View
412249-401	03/09/2016	RECEIPT		23302194			4		
412249-401	03/08/2016	Electronic Filing Fee		23300958			4		
412249-401	03/08/2016	Misc. Notice	DEFENDANT ANITA KAY BRUNSTING NOTICE OF DESIGNATION OF ATTORNEY IN CHARGE Film code number PBT-2016-77711	23300955	Misc. Notice	2	4	10884132	View
412249-401	03/07/2016	RECEIPT		23296599			4		
412249-401	03/07/2016	Electronic Filing Fee		23295622			4		
412249-401	03/07/2016	Legacy Event		23295618	Legacy Event	5	4	10881580	View
412249-401	01/26/2016	RECEIPT		23205078			4		
412249-401	01/25/2016	Instrument Over 25 Pages		23204331			4		
412249-401	01/25/2016	Electronic Filing Fee		23204328			4		
412249-401	01/25/2016	Application for Summary Judgement	CANDACE LOUISE CURTIS VERIFIED MOTION FOR ARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT Film code number PBT-2016-26242	23204319	Application for Summary Judgement	703	4	10835468	View
412249-401	08/13/2015	Folder Created		22863091			4		
412249-401	08/13/2015	Folder Created		22863056			4		
412249-401	08/10/2015	RECEIPT		22855216			4		
412249-401	08/10/2015	Electronic Filing Fee		22854376			4		
412249-401	08/10/2015	Instrument Over 25 Pages		22854373			4		
412249-401	08/10/2015	Responses	RESPONSE TO DEFENDANT RESPONSE TO CARL HENTRY BRYNSTING MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-258999	22854372	Responses	49	4	10656926	View
412249-401	08/03/2015	RECEIPT		22839911			4		
412249-401	08/03/2015	Electronic Filing Fee		22839666			4		
412249-401	08/03/2015	Amended	THIRD SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION AND REQUEST FOR INJUNCTIVE RELIEF Film code number PBT-2015-250703	22839664	Amended	6	4	10649050	View
412249-401	08/03/2015	RECEIPT		22839061			4		

412249-401	07/31/2015	Electronic Filing Fee		22838484				4		
412249-401	07/31/2015	Responses	DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-250083	22838482	Responses	6	4	10648449	View	
412249-401	07/24/2015	RECEIPT		22820773				4		
412249-401	07/23/2015	Notice of Hearing	HEARING- 08-03-15 @ 11:00 AM Film code number PBT-2015-240340	22820305	Notice of Hearing	2	4	10639208	View	
412249-401	07/23/2015	Electronic Filing Fee		22820303				4		
412249-401	07/21/2015	RECEIPT		22813695				4		
412249-401	07/20/2015	Conform Copies	CONF COPY	22813664				4		
412249-401	07/20/2015	Electronic Filing Fee		22812314				4		
412249-401	07/20/2015	Instrument Over 25 Pages		22812313				4		
412249-401	07/20/2015	Motion For Protective Order	CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER NO SERVICE REQUESTED Film code number PBT-2015-235874	22812310	Motion For Protective Order	51	4	10635027	View	
412249-401	07/20/2015	RECEIPT		22810187				4		
412249-401	07/20/2015	Attorney Assigned		22809109				4		
412249-401	07/17/2015	Electronic Filing Fee		22809119				4		
412249-401	07/17/2015	Instrument Over 25 Pages		22809116				4		
412249-401	07/17/2015	Responses	NON-PARTY'S CANDACE L KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC'S RESPONSE TO CARL HENRY BRUNSTING'S MOTION TO TRANSFER RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code number PBT-2015-234080	22809114	Responses	96	4	10633412	View	
412249-401	07/15/2015	Legacy Event		22801894				4		
412249-401	07/15/2015	RECEIPT		22800036				4		
412249-401	07/14/2015	Electronic Filing Fee		22799561				4		
412249-401	07/14/2015	Notice of Hearing	ON 7/21/2015 AT 2:00 PM Film code number PBT-2015-228889	22799557	Notice of Hearing	3	4	10628528	View	
412249-401	07/14/2015	Application to Transfer Docket (Indep.)	RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code	22799556	Application to Transfer Docket	6	4	10628527	View	

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			number PBT-2015-228888		(Indep.)					
412249-401	07/14/2015	RECEIPT		22798842				4		
412249-401	07/14/2015	RECEIPT		22798415				4		
412249-401	07/13/2015	Electronic Filing Fee		22797462				4		
412249-401	07/13/2015	Instrument Over 25 Pages		22797461				4		
412249-401	07/13/2015	Responses	PLAINTIFF CURTIS RESPONE TO DEFENDANTS NO EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE Film code number PBT-2015-227757	22797459	Responses	47	4	10627483	View	
412249-401	07/13/2015	Electronic Filing Fee		22796824				4		
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-227302	22796822	Notice of Hearing	2	4	10627054	View	
412249-401	07/13/2015	RECEIPT		22795657				4		
412249-401	07/13/2015	Electronic Filing Fee		22795444				4		
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-226432	22795443	Notice of Hearing	2	4	10626242	View	
412249-401	07/13/2015	Legacy Event		22794722				4		
412249-401	07/13/2015	RECEIPT		22794134				4		
412249-401	07/10/2015	Electronic Filing Fee		22793338				4		
412249-401	07/10/2015	Amended	SECOND SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION Film code number PBT-2015-225377	22793337	Amended	3	4	10625227	View	
412249-401	07/10/2015	RECEIPT		22792816				4		
412249-401	07/09/2015	Electronic Filing Fee		22792124				4		
412249-401	07/09/2015	Instrument Over 25 Pages		22792121				4		
412249-401	07/09/2015	Application for Summary Judgement	CARL HENRY BRUNSTING MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-225037	22792077	Application for Summary Judgement	260	4	10624907	View	
412249-401	07/08/2015	RECEIPT		22784812				4		
412249-401	07/07/2015	Electronic Filing Fee		22783920				4		
412249-401	07/07/2015	Notice of Intention to Take Written Deposition	NO POST REQUESTED Film code number PBT-2015-220731	22783918	Notice of Intention to Take Written Deposition	5	4	10620833	View	

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412249-401	07/02/2015	Miscellaneous Order	ORDER DENYING LAW-MOTION-TO-SHOW-AUTHORITY-TRCP-12; THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-216035	22775714	Miscellaneous Order	17	4	10616341	View	
412249-401	07/02/2015	RECEIPT		22774399				4		
412249-401	07/01/2015	Electronic Filing Fee		22772988				4		
412249-401	07/01/2015	No Fee - Other	AMY RUTH BRUNSTING DESIGNATION OF EXPERTS Film code number PBT-2015-214532	22772987	No Fee - Other	4	4	10614908	View	
412249-401	07/01/2015	RECEIPT		22771931				4		
412249-401	07/01/2015	RECEIPT		22771896				4		
412249-401	07/01/2015	Electronic Filing Fee		22771591				4		
412249-401	07/01/2015	Amended	CARL HENRY BRUNSTING FIRST AMENDED EXPERT WITNESS DESIGNATION AND FURTHER SUPPLEMENT TO CAROL RESPONSES TO ALL REQUESTS FOR DISCLOSURES Film code number PBT-2015-213764	22771590	Amended	3	4	10614163	View	
412249-401	07/01/2015	Electronic Filing Fee		22771484				4		
412249-401	07/01/2015	No Fee - Other	ANITA KAY BRUNSTING EXPERT DESIGNATION Film code number PBT-2015-213684	22771480	No Fee - Other	6	4	10614096	View	
412249-401	06/26/2015	RECEIPT		22761935				4		
412249-401	06/26/2015	Electronic Filing Fee		22761581				4		
412249-401	06/26/2015	Application for Summary Judgement	ANITA AND AMY BRUNSTING'S JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-208305	22761579	Application for Summary Judgement	9	4	10609038	View	
412249-401	06/19/2015	RECEIPT		22744589				4		
412249-401	06/18/2015	Judge Signature Fee		22744197				4		
412249-401	06/18/2015	Electronic Filing Fee		22744196				4		
412249-401	06/18/2015	Rule 11 Agreement	STIPULATION AND RULE 11 AGREEMENT CONCERNING MOTION TO SHOW AUTHORITY Film code number PBT-2015-198889	22744193	Rule 11 Agreement	17	4	10600148	View	
412249-401	04/10/2015	RECEIPT		22596250				4		
412249-401	04/10/2015	Application of Miscellaneous kind	LAW MOTION TO SHOW AUTHORITY TRCP 12 MOTION TO DISMISS FOR	22596082	Application of Miscellaneous	7	4	10522914	View	

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			WANT OF JURISDICTION Film code number PBT-2015-117405		kind					
412249-401	03/31/2015	Order to Compel (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-105354	22574533	Order to Compel (Dep.)	43	4	10511562	View
412249-401	03/25/2015	RECEIPT		22562008			4		
412249-401	03/24/2015	Electronic Filing Fee		22560448			4		
412249-401	03/24/2015	Instrument Over 25 Pages		22560421			4		
412249-401	03/24/2015	Responses	RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO DISCLOSURES Film code number PBT-2015-97461	22560413	Responses	43	4	10504142	View
412249-401	03/24/2015	RECEIPT		22559683			4		
412249-401	03/23/2015	Electronic Filing Fee		22559674			4		
412249-401	03/23/2015	Objection	OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR Film code number PBT-2015-95444	22556936	Objection	4	4	10502276	View
412249-401	03/23/2015	Order to Compel (Dep.)	CARL AND CANDACE TO REPOND TO DISCLOSURES; SIGNED 3/23/15 Film code number PBT-2015-95392	22556866	Order to Compel (Dep.)	2	4	10502227	View
412249-401	03/23/2015	RECEIPT		22555465			4		
412249-401	03/20/2015	Electronic Filing Fee		22554505			4		
412249-401	03/20/2015	Amended	FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION Film code number PBT-2015-94015	22554504	Amended	4	4	10500933	View
412249-401	03/11/2015	RECEIPT		22532147			4		
412249-401	03/11/2015	Electronic Filing Fee		22531936			4		
412249-401	03/11/2015	Application to Compel (Indep.)	CARL & CANDACE TO RESPOND TO DISCLOSURES Film code number PBT-2015-81853	22531935	Application to Compel (Indep.)	31	4	10489402	View
412249-401	03/10/2015	RECEIPT		22528715			4		
412249-401	03/10/2015	Electronic Filing Fee		22526997			4		
412249-401	03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE Film code number	22526995	Objection	16	4	10487197	View

			PBT-2015-79533							
412249-401	03/06/2015	RECEIPT		22522024			4			
412249-401	03/05/2015	Conform Copies		22521398			4			
412249-401	03/05/2015	Electronic Filing Fee		22521035			4			
412249-401	03/05/2015	Order to Consolidate	ORDER NOT ENTERED Film code number PBT-2015-76288	22521032	Order to Consolidate	4	4	10484089	View	
412249-401	02/20/2015	Agreed Order	AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15 Film code number PBT-2015-59154	22489856	Agreed Order	2	4	10467953	View	
412249-401	02/19/2015	Miscellaneous Order	ORDER DENYING PLANTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15 Film code number PBT-2015-58239	22487858	Miscellaneous Order	2	4	10467094	View	
412249-401	02/18/2015	RECEIPT		22486005			4			
412249-401	02/17/2015	Electronic Filing Fee		22484864			4			
412249-401	02/17/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF PARTY Film code number PBT-2015-56642	22484863	Misc. Notice	2	4	10465564	View	
412249-401	02/13/2015	RECEIPT		22474018			4			
412249-401	02/12/2015	Electronic Filing Fee		22473133			4			
412249-401	02/12/2015	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2015-49926	22473132	Certificate	2	4	10459314	View	
412249-401	02/11/2015	Subpoena Returned		22499993	Subpoena Returned	1	4	10473440	View	
412249-401	12/09/2014	Miscellaneous Order	ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS; SIGNED 12/9/14 Film code number PBT-2014-396930	22333498	Miscellaneous Order	1	4	10390940	View	
412249-401	12/09/2014	Objection	TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-396928	22333494	Objection	7	4	10390938	View	
412249-401	12/09/2014	RECEIPT		22333075			4			
412249-401	12/09/2014	Electronic Filing Fee		22332395			4			
412249-401	12/09/2014	Objection	OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code	22332389	Objection	7	4	10390361	View	

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			number PBT-2014-396326							
412249-401	12/09/2014	RECEIPT		22331923			4			
412249-401	12/08/2014	Electronic Filing Fee		22331427			4			
412249-401	12/08/2014	Responses	AMY RUTH BRUNSTING'S REPONSE TO CARL HENRY BRUNSTING'S MOTION TO REMOVE TRUSTEE Film code number PBT-2014-395809	22331426	Responses	4	4	10389892	View	
412249-401	12/08/2014	Electronic Filing Fee		22331420			4			
412249-401	12/08/2014	Misc. Notice	OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL FOR AMY RUTH BRUNSTING Film code number PBT-2014-395795	22331416	Misc. Notice	3	4	10389878	View	
412249-401	12/08/2014	RECEIPT		22328816			4			
412249-401	12/05/2014	Electronic Filing Fee		22327923			4			
412249-401	12/05/2014	Responses	TO CARL'S MOTION TO REMOVE TRUSTEES Film code number PBT-2014-393812	22327921	Responses	3	4	10387975	View	
412249-401	12/05/2014	Electronic Filing Fee		22327917			4			
412249-401	12/05/2014	Instrument Over 25 Pages		22327913			4			
412249-401	12/05/2014	Responses	TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-393808	22327909	Responses	156	4	10387972	View	
412249-401	12/02/2014	RECEIPT		22317681			4			
412249-401	12/02/2014	RECEIPT		22317367			4			
412249-401	12/02/2014	Attorney Assigned		22317022			4			
412249-401	12/01/2014	Electronic Filing Fee		22317025			4			
412249-401	12/01/2014	Witness List	PLAINTIFFS DESIGNATION OF EXPERT WITNESS Film code number PBT-2014-387901	22317023	Witness List	9	4	10382378	View	
412249-401	12/01/2014	Electronic Filing Fee		22316602			4			
412249-401	12/01/2014	Declination to Serve	CARL HENRY BRUNSTING'S EXPERT WITNESS DESIGNATION Film code number PBT-2014-387708	22316600	Declination to Serve	10	4	10382195	View	
412249-401	12/01/2014	RECEIPT		22314293			4			
412249-401	12/01/2014	Electronic Filing Fee		22313084			4			

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412249-401	12/01/2014	Designation	OF EXPERT WITNESSES Film code number PBT-2014-385649	22313083	Designation	15	4	10380228	View
412249-401	11/18/2014	RECEIPT		22293368			4		
412249-401	11/18/2014	RECEIPT		22293113			4		
412249-401	11/17/2014	Electronic Filing Fee		22291869			4		
412249-401	11/17/2014	Amended	AMENDED NOTICE OF ORAL HEARING DECEMBER 09, 2014 AT 3:00 P.M. Film code number PBT-2014-373944	22291862	Amended	2	4	10369234	View
412249-401	11/17/2014	Electronic Filing Fee		22291790			4		
412249-401	11/17/2014	Notice of Hearing	AMENDED NOTICE OF ORAL HEARING Film code number PBT-2014-373927	22291788	Notice of Hearing	2	4	10369219	View
412249-401	11/17/2014	RECEIPT		22286155			4		
412249-401	11/14/2014	Electronic Filing Fee		22285803			4		
412249-401	11/14/2014	Designation	NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL Film code number PBT-2014-371437	22285800	Designation	3	4	10366856	View
412249-401	11/13/2014	RECEIPT		22283039			4		
412249-401	11/13/2014	Electronic Filing Fee		22282550			4		
412249-401	11/13/2014	Demand for a Jury		22282549	Demand for a Jury	3	4	10365377	View
412249-401	11/13/2014	Objection	OBJECTION TO PLAINTIFFS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-369853	22282544	Objection	7	4	10365373	View
412249-401	11/13/2014	Attorney Assigned		22282540			4		
412249-401	11/10/2014	RECEIPT		22274992			4		
412249-401	11/10/2014	RECEIPT		22273153			4		
412249-401	11/10/2014	RECEIPT		22272926			4		
412249-401	11/10/2014	RECEIPT		22272588			4		
412249-401	11/07/2014	Electronic Filing Fee		22272374			4		
412249-401	11/07/2014	Notice of Hearing	OF ORAL ON 11/17/2014 AT 2:00 PM Film code number PBT-2014-363948	22272371	Notice of Hearing	2	4	10359858	View
412249-401	11/07/2014	Electronic Filing Fee		22272353			4		
412249-401	11/07/2014	Notice of Hearing	NOVEMBER 17, 2014 AT 2:00 PM Film code number PBT-2014-363941	22272350	Notice of Hearing	2	4	10359851	View
412249-401	11/07/2014	Electronic Filing Fee		22272284			4		
412249-401	11/07/2014	Application of Miscellaneous kind	CARL BRUNSTING MOTION TO MODIFY PRELIMINARY INJUNCATION Film code number PBT-2014-363923	22272280	Application of Miscellaneous kind	16	4	10359833	View

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412249-401	11/07/2014	Electronic Filing Fee		22272257				4		
412249-401	11/07/2014	Application of Miscellaneous kind		22272255	Application of Miscellaneous kind	6	4	10359821	View	
412249-401	11/07/2014	Electronic Filing Fee		22272253				4		
412249-401	11/07/2014	Responses	PLAINTIFFS RESPONSE TO CANDACE LOUISE CURTIS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-363907	22272250	Responses	3	4	10359817	View	
412249-401	09/18/2014	Legacy Event	ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL FOR ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY AND AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART IT IS ORDERED THAT MAUREEN KUZIK MCCUTCHEN, AND THE LAW FIRM OF MILLS SHIRLEY LLP, ARE PERMITTED TO WITHDRAW AS COUNSEL, SIGNED SEPTEMBER 18, 2014 Film code number PBT-2014-305816	22162700	Legacy Event	2	4	10304906	View	
412249-401	09/17/2014	RECEIPT		22159463				4		
412249-401	09/17/2014	Electronic Filing Fee		22158354				4		
412249-401	09/17/2014	Affidavit of Notice		22158349	Affidavit of Notice	8	4	10303114	View	
412249-401	09/09/2014	RECEIPT		22141066				4		
412249-401	09/09/2014	Electronic Filing Fee		22140844				4		
412249-401	09/09/2014	Legacy Event		22140841	Legacy Event	7	4	10294095	View	
412249-401	09/09/2014	RECEIPT		22140039				4		
412249-401	09/09/2014	Electronic Filing Fee		22139500				4		
412249-401	09/09/2014	Notice of Hearing		22139494	Notice of Hearing	3	4	10293371	View	
412249-401	09/04/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FEES IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY, AND	22128646	Miscellaneous Order	2	4	10288845	View	

			SHALL HAVE AUTHORITY TO PAY WITHOUT FURTHER ORDER OF THIS COURT AND THAT ALL PAYMENTS REGARDING THE ELMER H. BRUNSTING DECEDENT'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3536 AND THAT ALL PAYMENTS REGARDING THE NELVA F. BRUNSTING SURVIVOR'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3523 SIGNED SEPTEMBER 4, 2014 Film code number PBT-2014-288833								
412249-401	08/27/2014	RECEIPT		22112746				4		
412249-401	08/27/2014	Attorney Assigned		22112432				4		
412249-401	08/27/2014	Electronic Filing Fee		22112424				4		
412249-401	08/27/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS - ORDER NOT ENTERED Film code number PBT-2014-281217	22112417	Miscellaneous Order	2	4	10281595	View	
412249-401	08/27/2014	Application of Miscellaneous kind	MOTION TO DISTRINUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SUTVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FES Film code number PBT-2014-281213	22112411	Application of Miscellaneous kind	8	4	10281591	View	
412249-401	08/27/2014	RECEIPT		22112225				4		
412249-401	08/27/2014	Notice of Hearing	ORAL HEARING SEPTEMBER 4, 2014 AT 10:30 AM Film code number PBT-2014-280737	22111607	Notice of Hearing	2	4	10281133	View	
412249-401	08/26/2014	Electronic Filing Fee		22111611				4		
412249-401	08/05/2014	Legacy Event	ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE IT	22061276	Legacy Event	7	4	10257689	View	

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			IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY ANDREWS KURTH LLP MEDIATION FEE OF $6,500.00, AND ANY ADDITIONAL FEES AGREED TO IN WRITING, ONE HALF OF FEES SHALL BE PAID OUT OF THE DECEDENT'S TRUST AND ONE HALF OUT OF THE SURVIVOR'S TRUST SIGNED AUGUST 4, 2014 Film code number PBT-2014-256006							
412249-401	07/31/2014	RECEIPT		22051332			4			
412249-401	07/30/2014	Electronic Filing Fee		22050838			4			
412249-401	07/30/2014	Application of Miscellaneous kind	AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H BRUNSTING DECEDENT TRUST AND THE NELVA F BRUNSTING SURVIVOR TRUST TO PAY MEDIATOR FEE Film code number PBT-2014-250085	22050837	Application of Miscellaneous kind	7	4	10252018	View	
412249-401	07/09/2014	Agreed Order	DOCKET CONTROL ORDER SIGNED 7/8/14 Film code number PBT-2014-225383	22004818	Agreed Order	3	4	10228889	View	
412249-401	07/03/2014	RECEIPT		21994106			4			
412249-401	07/02/2014	Electronic Filing Fee		21993266			4			
412249-401	07/02/2014	Agreed Order	DOCKET CONTROL ORDER NOT ENTERED Film code number PBT-2014-218797	21993262	Agreed Order	3	4	10222821	View	
412249-401	06/04/2014	Miscellaneous Order	ORDER OF TRANSFER, SIGNED JUNE 3, 2014 Film code number PBT-2014-184792	21926067	Miscellaneous Order	7	4	10191039	View	
412249-401	05/29/2014	RECEIPT		21912730			4			
412249-401	05/28/2014	Electronic Filing Fee		21910726			4			
412249-401	05/28/2014	Application of Miscellaneous kind	MOTION TO ENTER TRANSFER ORDER Film code number PBT-2014-176707	21910722	Application of Miscellaneous kind	7	4	10183535	View	
412249-401	11/27/2013	Certificate	OF WRITTEN DISCOVERY FILE AS IS PER ATTY Film code number PBT-2013-385311	21545003	Certificate	3	4	9993118	View	
412249-401	06/26/2013	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2013-207728	21252737	Certificate	3	4	9825067	View	
412249-401	06/07/2013	Amended	FIRST AMENDED PETITION FOR	21218496	Amended	18	4	9804466	View	

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			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST Film code number PBT-2013-185898						
412249-401	05/31/2013	Amended	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY, AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AS A SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THENELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE ANITA KAY BRUNSTING PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176480	21203560	Amended	6	4	9795773	View
412249-401	05/31/2013	Amended	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARD, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR	21203548	Amended	6	4	9795767	View

			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176474						
412249-401	05/29/2013	Certificate	CERTIFICATE OF WRITTEN DISCOVERY Film code number PBT-2013-174241	21200010	Certificate	3	4	9793694	View
412249-401	05/13/2013	Answer	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154981	21167653	Answer	5	4	9776060	View
412249-401	05/13/2013	Answer	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST,	21167647	Answer	5	4	9776056	View

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			AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154977							
412249-401	05/08/2013	Affidavit	JOHN KASPAR Film code number PBT-2013-151609	21161865	Affidavit	1	4	9773018	View
412249-401	05/08/2013	Affidavit	PETER DOWDLE Film code number PBT-2013-151607	21161863	Affidavit	1	4	9773016	View
412249-401	05/06/2013	RECEIPT		21154580			4		
412249-401	05/06/2013	RECEIPT		21154256			4		
412249-401	05/03/2013	CounterClaim to Declaratory Judgement (Indep.)	CAROLE ANN BRUNSTING'S SPECIAL EXCEPTIONS AND SUBJECT THERETO ORIGINAL ANSWER AND COUNTERCLAIM Film code number PBT-2013-146160	21153621	CounterClaim to Declaratory Judgement (Indep.)	16	4	9768055	View
412249-401	04/22/2013	Waiver	CANDACE LOUISE CURTIS Film code number PBT-2013-130579	21129125	Waiver	3	4	9753742	View
412249-401	04/17/2013	Lawsuit Personal - Out / Private	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 2582 COUNTRY LEDGE, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78132 Film code number PBT-2013-125034	21119975	Lawsuit Personal - Out / Private	1	4	9748703	View
412249-401	04/17/2013	Lawsuit Personal - Out / Private	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, 203 BLOOMINGDALE CIRCLE, VICTORIA, VICTORIA COUNTY, TEXAS 77904 Film code number PBT-2013-124969	21119825	Lawsuit Personal - Out / Private	1	4	9748652	View
412249-401	04/16/2013	Citation Returned	SERVED PERSONAL CITATION TO CAROLE ANN BRUNSTING ON 4/15/13 Film code number PBT-2013-124419	21118787	Citation Returned	2	4	9748158	View
412249-401	04/16/2013	RECEIPT		21117910			4		
412249-401	04/16/2013	Citation Issued	1 PER BY P/P AMY RUTH BRUNSTING F/K/A AMY	21117863			4		

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			RUTH TSCHIRHART 2582 COUNTRY LEDGE NEW BRAUNFELS, COMAL COUNTY, TX 78132	
412249-401	04/16/2013	Citation Issued	1 PERS BY P/P ANITA KAY BRUNSTING F/K/A/ ANITA KAY RILEY 203 BLOOMINGDALE CIRCLE VICTORIA, VICTORIA COUNTY, TX 77904	21117855 4
412249-401	04/10/2013	Lawsuit Personal - Out / Private	CAROLE ANN BRUNSTING, 1333 W LOOP S., STE. 1700, HOU., TX 77027 Film code number PBT-2013-116956	21105451 Lawsuit Personal - Out / Private 2 4 9741475 View
412249-401	04/09/2013	RECEIPT		21103484 4
412249-401	04/09/2013	Civil Case Information Sheet		21103388 Civil Case Information Sheet 1 4 9740263 View
412249-401	04/09/2013	Citation Issued	1 PERS IN -CAROLE ANN BRUNSTING	21103384 4
412249-401	04/09/2013	Declaratory Judgement (Indep.)	PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES 1 PERS IN -CAROLE ANN BRUNSTING Film code number PBT-2013-115617	21103371 Declaratory Judgement (Indep.) 20 4 9740252 View
412249-401	04/09/2013	Folder Created		21103298 4
412249-401	04/09/2013	Case Initiated Application (OCA)		21103297 4

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44 Record(s) Found.

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1597405	412248	04/02/2012	ORIGINAL WILL DEPOSIT	DEPOSIT WILL WITH NO APPLICATION	ELMER H BRUNSTING	Closed	CHRISTINE BUTTS	4	Parties

Case	Event Date	Event Desc	Comments						Pgs	
412248	04/02/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF COUNSEL OF RECORD AND APPEARANCE Film code number PBT-2015-107526	22578391	Misc. Notice	2	4	10513615		View
412248	03/13/2015	RECEIPT		22537220					4	
412248	03/13/2015	Attorney Assigned		22536526					4	
412248	03/12/2015	Electronic Filing Fee		22536527					4	
412248	03/12/2015	Responses	AMY RUTH BRUNSTING RESPONSE TO CARL BRUNSTING APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS APPLICATION FOR APPOINTMENT AS SUCCESSOR EXECUTOR Film code number PBT-2015-84163	22536524	Responses	8	4	10491540		View
412248	03/10/2015	RECEIPT		22529251					4	
412248	03/10/2015	Electronic Filing Fee		22528518					4	

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412248	03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE -PER ATY FILE AS IS INSISTED HE WAS NOT TO PAY FILING FEES. Film code number PBT-2015-80305	22528517	Objection	16	4	10487929	View		
412248	03/10/2015	Attorney Assigned		22528516			4				
412248	02/19/2015	RECEIPT		22487010			4				
412248	02/19/2015	Electronic Filing Fee		22486776			4				
412248	02/19/2015	Application to Resign	CARL HENRY BRUNSTING APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE CURTIS APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE Film code number PBT-2015-57596	22486774	Application to Resign	4	4	10466484	View		
412248	10/17/2014	Letter Application		22224366	Letter Application	1	4	10336349	View		
				22224366	Letter Application	2	4	10336350	View		
412248	04/05/2013	Legacy Event	SIGNED APRIL 4, 2013, DOCKET DROP Film code number PBT-2013-111091	21096276	Legacy Event	1	4	9736064	View		
412248	04/05/2013	Order on Inventory (Indep.)	ORDERED INVENTORY, APPRAISEMENT AND LIST OF CLAIMS APPROVED, SIGNED APRIL 4, 2013 Film code number PBT-2013-111087	21096268	Order on Inventory (Indep.)	1	4	9736060	View		
412248	03/26/2013	RECEIPT		21077322			4				
412248	03/26/2013	Conform Copies		21077248			4				
412248	03/26/2013	Conform Copies		21077228			4				
412248	03/26/2013	Inventory (Indep.)		21077221	Inventory (Indep.)	7	4	9724965	View		
412248	12/26/2012	Misc. Notice	NOTICE OF APPEARANCE OF COUNSEL - MAUREEN KUZIK MCCUTCHEN Film code number PBT-2012-413501	20910814	Misc. Notice	2	4	9628441	View		
412248	12/05/2012	Order to Extension	FOR FILING SUCH INVENTORY TO 3/26/13 SIGNED 11/30/12 Film code number PBT-2012-396211	20880446	Order to Extension	1	4	9612336	View		
412248	11/26/2012	RECEIPT		20862532			4				
412248	11/26/2012	RECEIPT		20862476			4				
412248	11/26/2012	Affidavit	PERSONAL REPRESENTATIVE'S AFFIDAVIT OF COMPLIANCE WITH NOTICE REQUIRMENTS	20862444	Affidavit	16	4	9600613	View		

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			UNDER SECTION 128A, TEXAS PROBATE CODE Film code number PBT-2012-383705							
412248	11/26/2012	Conform Copies		20862436			4			
412248	11/26/2012	Application for Extension		20862435	Application for Extension	2	4	9600608	View	
412248	09/05/2012	Legacy Event		20717137	Legacy Event	1	4	9518518	View	
412248	08/28/2012	Order Admitting Will and Issuance of Letters Testamentary	ORDERED WILL ADMITTED TO PROBATE, LETTERS TESTAMENTARY TO CARL HENRY BRUNSTING, WHO IS APPOINTED INDEPENDENT EXECUTOR, W/O BOND, APPRAISERS WIAVED, SIGNED AUGUST 28, 2012 Film code number PBT-2012-287027	20702869	Order Admitting Will and Issuance of Letters Testamentary	2	4	9509885	View	
412248	08/28/2012	Admitted Will	TO PROBATE Film code number PBT-2012-287022	20702861	Admitted Will	12	4	9509881	View	
412248	08/28/2012	Proof of Misc. Types	OF DEATH AND OTHER FACTS, DRINA BRUNSTING Film code number PBT-2012-287019	20702858	Proof of Misc. Types	2	4	9509878	View	
412248	08/28/2012	Oath		20702855	Oath	1	4	9509876	View	
412248	08/28/2012	Letter Application		20702822	Letter Application	1	4	9509841	View	
				20702822	Letter Application	2	4	9509842	View	
412248	08/28/2012	Letter Application		20702817	Letter Application	2	4	9509839	View	
412248	08/27/2012	Citation Returned	SERVED CITATION ON APPLICATION FOR PROBATE OF LAST WILL BY POSTING Film code number PBT-2012-285509	20699973	Citation Returned	2	4	9508501	View	
412248	08/16/2012	Conversion Service Event	Executed: N;	20682097			4			
412248	08/16/2012	PW-LT-Posting		20682096	PW-LT-Posting	2	4	9497864	View	
412248	08/15/2012	RECEIPT		20681947			4			
412248	08/15/2012	Civil Case Information Sheet		20681946	Civil Case Information Sheet	1	4	9497788	View	
412248	08/15/2012	App to Probate Will and Issuance of Letters Testamentary	PW-LT POST DOD 4 01 2009 RETURN DATE AUGUST 27 2012 Film code number PBT-2012-274058	20681944	App to Probate Will and Issuance of Letters Testamentary	2	4	9497786	View	
412248	08/15/2012	Attorney Assigned		20681943			4			
412248	04/02/2012	Purported Will		20681945	Purported Will	12	4	9497787	View	

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412248	04/02/2012	Abstract of Notice		20447682	Abstract of Notice	1	4	9359614	View
412248	04/02/2012	Folder Created		20447658			4		
412248	04/02/2012	Case Initiated Application (OCA)	SEC 75 ORIGINAL WILL FILED DOD: 04/01/2009 Film code number PBT-2012-122640	20447657	Case Initiated Application (OCA)	12	4	9359611	View

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228 Record(s) Found.

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1618413	412249-401	04/09/2013	ANCILLARY (LAWSUITS CASES) - CONVERSION		NELVA E. BRUNSTING, DECEASED	Open	CHRISTINE BUTTS	4	Parties

Case	Event Date	Event Desc	Comments						Pgs	
412249-401	10/12/2016	Certificate		35334579	Certificate	4	4	13228882		View
412249-401	10/12/2016	Application to Dismiss		35334577	Application to Dismiss	11	4	13228881		View
412249-401	04/07/2016	Legacy Event	ORDERED DARLENE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-112549	23365329	Legacy Event	2	4	10916912		View
412249-401	03/14/2016	Legacy Event	ORDERED DARLNE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-83225	23311126	Legacy Event	5	4	10889271		View

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412249-401	03/14/2016	Letter	CAROLE BRUNSTING Film code number PBT-2016-83130	23310902	Letter	2	4	10889179	View
412249-401	03/09/2016	RECEIPT		23302194			4		
412249-401	03/08/2016	Electronic Filing Fee		23300958			4		
412249-401	03/08/2016	Misc. Notice	DEFENDANT ANITA KAY BRUNSTING NOTICE OF DESIGNATION OF ATTORNEY IN CHARGE Film code number PBT-2016-77711	23300955	Misc. Notice	2	4	10884132	View
412249-401	03/07/2016	RECEIPT		23296599			4		
412249-401	03/07/2016	Electronic Filing Fee		23295622			4		
412249-401	03/07/2016	Legacy Event		23295618	Legacy Event	5	4	10881580	View
412249-401	01/26/2016	RECEIPT		23205078			4		
412249-401	01/25/2016	Instrument Over 25 Pages		23204331			4		
412249-401	01/25/2016	Electronic Filing Fee		23204328			4		
412249-401	01/25/2016	Application for Summary Judgement	CANDACE LOUISE CURTIS VERIFIED MOTION FOR ARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT Film code number PBT-2016-26242	23204319	Application for Summary Judgement	703	4	10835468	View
412249-401	08/13/2015	Folder Created		22863091			4		
412249-401	08/13/2015	Folder Created		22863056			4		
412249-401	08/10/2015	RECEIPT		22855216			4		
412249-401	08/10/2015	Electronic Filing Fee		22854376			4		
412249-401	08/10/2015	Instrument Over 25 Pages		22854373			4		
412249-401	08/10/2015	Responses	RESPONSE TO DEFENDANT RESPONSE TO CARL HENTRY BRYNSTING MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-258999	22854372	Responses	49	4	10656926	View
412249-401	08/03/2015	RECEIPT		22839911			4		
412249-401	08/03/2015	Electronic Filing Fee		22839666			4		
412249-401	08/03/2015	Amended	THIRD SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION AND REQUEST FOR INJUNCTIVE RELIEF Film code number PBT-2015-250703	22839664	Amended	6	4	10649050	View
412249-401	08/03/2015	RECEIPT		22839061			4		

412249-401	07/31/2015	Electronic Filing Fee		22838484				4		
412249-401	07/31/2015	Responses	DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-250083	22838482	Responses	6	4	10648449	View	
412249-401	07/24/2015	RECEIPT		22820773				4		
412249-401	07/23/2015	Notice of Hearing	HEARING- 08-03-15 @ 11:00 AM Film code number PBT-2015-240340	22820305	Notice of Hearing	2	4	10639208	View	
412249-401	07/23/2015	Electronic Filing Fee		22820303				4		
412249-401	07/21/2015	RECEIPT		22813695				4		
412249-401	07/20/2015	Conform Copies	CONF COPY	22813664				4		
412249-401	07/20/2015	Electronic Filing Fee		22812314				4		
412249-401	07/20/2015	Instrument Over 25 Pages		22812313				4		
412249-401	07/20/2015	Motion For Protective Order	CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER NO SERVICE REQUESTED Film code number PBT-2015-235874	22812310	Motion For Protective Order	51	4	10635027	View	
412249-401	07/20/2015	RECEIPT		22810187				4		
412249-401	07/20/2015	Attorney Assigned		22809109				4		
412249-401	07/17/2015	Electronic Filing Fee		22809119				4		
412249-401	07/17/2015	Instrument Over 25 Pages		22809116				4		
412249-401	07/17/2015	Responses	NON-PARTY'S CANDACE L KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC'S RESPONSE TO CARL HENRY BRUNSTING'S MOTION TO TRANSFER RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code number PBT-2015-234080	22809114	Responses	96	4	10633412	View	
412249-401	07/15/2015	Legacy Event		22801894				4		
412249-401	07/15/2015	RECEIPT		22800036				4		
412249-401	07/14/2015	Electronic Filing Fee		22799561				4		
412249-401	07/14/2015	Notice of Hearing	ON 7/21/2015 AT 2:00 PM Film code number PBT-2015-228889	22799557	Notice of Hearing	3	4	10628528	View	
412249-401	07/14/2015	Application to Transfer Docket (Indep.)	RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code	22799556	Application to Transfer Docket	6	4	10628527	View	

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			number PBT-2015-228888		(Indep.)					
412249-401	07/14/2015	RECEIPT		22798842				4		
412249-401	07/14/2015	RECEIPT		22798415				4		
412249-401	07/13/2015	Electronic Filing Fee		22797462				4		
412249-401	07/13/2015	Instrument Over 25 Pages		22797461				4		
412249-401	07/13/2015	Responses	PLAINTIFF CURTIS RESPONE TO DEFENDANTS NO EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE Film code number PBT-2015-227757	22797459	Responses	47	4	10627483	View	
412249-401	07/13/2015	Electronic Filing Fee		22796824				4		
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-227302	22796822	Notice of Hearing	2	4	10627054	View	
412249-401	07/13/2015	RECEIPT		22795657				4		
412249-401	07/13/2015	Electronic Filing Fee		22795444				4		
412249-401	07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015-226432	22795443	Notice of Hearing	2	4	10626242	View	
412249-401	07/13/2015	Legacy Event		22794722				4		
412249-401	07/13/2015	RECEIPT		22794134				4		
412249-401	07/10/2015	Electronic Filing Fee		22793338				4		
412249-401	07/10/2015	Amended	SECOND SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION Film code number PBT-2015-225377	22793337	Amended	3	4	10625227	View	
412249-401	07/10/2015	RECEIPT		22792816				4		
412249-401	07/09/2015	Electronic Filing Fee		22792124				4		
412249-401	07/09/2015	Instrument Over 25 Pages		22792121				4		
412249-401	07/09/2015	Application for Summary Judgement	CARL HENRY BRUNSTING MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-225037	22792077	Application for Summary Judgement	260	4	10624907	View	
412249-401	07/08/2015	RECEIPT		22784812				4		
412249-401	07/07/2015	Electronic Filing Fee		22783920				4		
412249-401	07/07/2015	Notice of Intention to Take Written Deposition	NO POST REQUESTED Film code number PBT-2015-220731	22783918	Notice of Intention to Take Written Deposition	5	4	10620833	View	

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412249-401	07/02/2015	Miscellaneous Order	ORDER DENYING LAW-MOTION-TO-SHOW-AUTHORITY-TRCP-12; THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-216035	22775714	Miscellaneous Order	17	4	10616341	View	
412249-401	07/02/2015	RECEIPT		22774399				4		
412249-401	07/01/2015	Electronic Filing Fee		22772988				4		
412249-401	07/01/2015	No Fee - Other	AMY RUTH BRUNSTING DESIGNATION OF EXPERTS Film code number PBT-2015-214532	22772987	No Fee - Other	4	4	10614908	View	
412249-401	07/01/2015	RECEIPT		22771931				4		
412249-401	07/01/2015	RECEIPT		22771896				4		
412249-401	07/01/2015	Electronic Filing Fee		22771591				4		
412249-401	07/01/2015	Amended	CARL HENRY BRUNSTING FIRST AMENDED EXPERT WITNESS DESIGNATION AND FURTHER SUPPLEMENT TO CAROL RESPONSES TO ALL REQUESTS FOR DISCLOSURES Film code number PBT-2015-213764	22771590	Amended	3	4	10614163	View	
412249-401	07/01/2015	Electronic Filing Fee		22771484				4		
412249-401	07/01/2015	No Fee - Other	ANITA KAY BRUNSTING EXPERT DESIGNATION Film code number PBT-2015-213684	22771480	No Fee - Other	6	4	10614096	View	
412249-401	06/26/2015	RECEIPT		22761935				4		
412249-401	06/26/2015	Electronic Filing Fee		22761581				4		
412249-401	06/26/2015	Application for Summary Judgement	ANITA AND AMY BRUNSTING'S JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-208305	22761579	Application for Summary Judgement	9	4	10609038	View	
412249-401	06/19/2015	RECEIPT		22744589				4		
412249-401	06/18/2015	Judge Signature Fee		22744197				4		
412249-401	06/18/2015	Electronic Filing Fee		22744196				4		
412249-401	06/18/2015	Rule 11 Agreement	STIPULATION AND RULE 11 AGREEMENT CONCERNING MOTION TO SHOW AUTHORITY Film code number PBT-2015-198889	22744193	Rule 11 Agreement	17	4	10600148	View	
412249-401	04/10/2015	RECEIPT		22596250				4		
412249-401	04/10/2015	Application of Miscellaneous kind	LAW MOTION TO SHOW AUTHORITY TRCP 12 MOTION TO DISMISS FOR	22596082	Application of Miscellaneous	7	4	10522914	View	

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			WANT OF JURISDICTION Film code number PBT-2015-117405		kind					
412249-401	03/31/2015	Order to Compel (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-105354	22574533	Order to Compel (Dep.)	43	4	10511562	View
412249-401	03/25/2015	RECEIPT		22562008			4		
412249-401	03/24/2015	Electronic Filing Fee		22560448			4		
412249-401	03/24/2015	Instrument Over 25 Pages		22560421			4		
412249-401	03/24/2015	Responses	RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO DISCLOSURES Film code number PBT-2015-97461	22560413	Responses	43	4	10504142	View
412249-401	03/24/2015	RECEIPT		22559683			4		
412249-401	03/23/2015	Electronic Filing Fee		22559674			4		
412249-401	03/23/2015	Objection	OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR Film code number PBT-2015-95444	22556936	Objection	4	4	10502276	View
412249-401	03/23/2015	Order to Compel (Dep.)	CARL AND CANDACE TO REPOND TO DISCLOSURES; SIGNED 3/23/15 Film code number PBT-2015-95392	22556866	Order to Compel (Dep.)	2	4	10502227	View
412249-401	03/23/2015	RECEIPT		22555465			4		
412249-401	03/20/2015	Electronic Filing Fee		22554505			4		
412249-401	03/20/2015	Amended	FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION Film code number PBT-2015-94015	22554504	Amended	4	4	10500933	View
412249-401	03/11/2015	RECEIPT		22532147			4		
412249-401	03/11/2015	Electronic Filing Fee		22531936			4		
412249-401	03/11/2015	Application to Compel (Indep.)	CARL & CANDACE TO RESPOND TO DISCLOSURES Film code number PBT-2015-81853	22531935	Application to Compel (Indep.)	31	4	10489402	View
412249-401	03/10/2015	RECEIPT		22528715			4		
412249-401	03/10/2015	Electronic Filing Fee		22526997			4		
412249-401	03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE Film code number	22526995	Objection	16	4	10487197	View

			PBT-2015-79533							
412249-401	03/06/2015	RECEIPT		22522024				4		
412249-401	03/05/2015	Conform Copies		22521398				4		
412249-401	03/05/2015	Electronic Filing Fee		22521035				4		
412249-401	03/05/2015	Order to Consolidate	ORDER NOT ENTERED Film code number PBT-2015-76288	22521032	Order to Consolidate	4	4	10484089	View	
412249-401	02/20/2015	Agreed Order	AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15 Film code number PBT-2015-59154	22489856	Agreed Order	2	4	10467953	View	
412249-401	02/19/2015	Miscellaneous Order	ORDER DENYING PLANTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15 Film code number PBT-2015-58239	22487858	Miscellaneous Order	2	4	10467094	View	
412249-401	02/18/2015	RECEIPT		22486005				4		
412249-401	02/17/2015	Electronic Filing Fee		22484864				4		
412249-401	02/17/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF PARTY Film code number PBT-2015-56642	22484863	Misc. Notice	2	4	10465564	View	
412249-401	02/13/2015	RECEIPT		22474018				4		
412249-401	02/12/2015	Electronic Filing Fee		22473133				4		
412249-401	02/12/2015	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2015-49926	22473132	Certificate	2	4	10459314	View	
412249-401	02/11/2015	Subpoena Returned		22499993	Subpoena Returned	1	4	10473440	View	
412249-401	12/09/2014	Miscellaneous Order	ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS; SIGNED 12/9/14 Film code number PBT-2014-396930	22333498	Miscellaneous Order	1	4	10390940	View	
412249-401	12/09/2014	Objection	TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-396928	22333494	Objection	7	4	10390938	View	
412249-401	12/09/2014	RECEIPT		22333075				4		
412249-401	12/09/2014	Electronic Filing Fee		22332395				4		
412249-401	12/09/2014	Objection	OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code	22332389	Objection	7	4	10390361	View	

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			number PBT-2014-396326							
412249-401	12/09/2014	RECEIPT		22331923			4			
412249-401	12/08/2014	Electronic Filing Fee		22331427			4			
412249-401	12/08/2014	Responses	AMY RUTH BRUNSTING'S REPONSE TO CARL HENRY BRUNSTING'S MOTION TO REMOVE TRUSTEE Film code number PBT-2014-395809	22331426	Responses	4	4	10389892	View	
412249-401	12/08/2014	Electronic Filing Fee		22331420			4			
412249-401	12/08/2014	Misc. Notice	OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL FOR AMY RUTH BRUNSTING Film code number PBT-2014-395795	22331416	Misc. Notice	3	4	10389878	View	
412249-401	12/08/2014	RECEIPT		22328816			4			
412249-401	12/05/2014	Electronic Filing Fee		22327923			4			
412249-401	12/05/2014	Responses	TO CARL'S MOTION TO REMOVE TRUSTEES Film code number PBT-2014-393812	22327921	Responses	3	4	10387975	View	
412249-401	12/05/2014	Electronic Filing Fee		22327917			4			
412249-401	12/05/2014	Instrument Over 25 Pages		22327913			4			
412249-401	12/05/2014	Responses	TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-393808	22327909	Responses	156	4	10387972	View	
412249-401	12/02/2014	RECEIPT		22317681			4			
412249-401	12/02/2014	RECEIPT		22317367			4			
412249-401	12/02/2014	Attorney Assigned		22317022			4			
412249-401	12/01/2014	Electronic Filing Fee		22317025			4			
412249-401	12/01/2014	Witness List	PLAINTIFFS DESIGNATION OF EXPERT WITNESS Film code number PBT-2014-387901	22317023	Witness List	9	4	10382378	View	
412249-401	12/01/2014	Electronic Filing Fee		22316602			4			
412249-401	12/01/2014	Declination to Serve	CARL HENRY BRUNSTING'S EXPERT WITNESS DESIGNATION Film code number PBT-2014-387708	22316600	Declination to Serve	10	4	10382195	View	
412249-401	12/01/2014	RECEIPT		22314293			4			
412249-401	12/01/2014	Electronic Filing Fee		22313084			4			

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412249-401	12/01/2014	Designation	OF EXPERT WITNESSES Film code number PBT-2014-385649	22313083	Designation	15	4	10380228	View
412249-401	11/18/2014	RECEIPT		22293368			4		
412249-401	11/18/2014	RECEIPT		22293113			4		
412249-401	11/17/2014	Electronic Filing Fee		22291869			4		
412249-401	11/17/2014	Amended	AMENDED NOTICE OF ORAL HEARING DECEMBER 09, 2014 AT 3:00 P.M. Film code number PBT-2014-373944	22291862	Amended	2	4	10369234	View
412249-401	11/17/2014	Electronic Filing Fee		22291790			4		
412249-401	11/17/2014	Notice of Hearing	AMENDED NOTICE OF ORAL HEARING Film code number PBT-2014-373927	22291788	Notice of Hearing	2	4	10369219	View
412249-401	11/17/2014	RECEIPT		22286155			4		
412249-401	11/14/2014	Electronic Filing Fee		22285803			4		
412249-401	11/14/2014	Designation	NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL Film code number PBT-2014-371437	22285800	Designation	3	4	10366856	View
412249-401	11/13/2014	RECEIPT		22283039			4		
412249-401	11/13/2014	Electronic Filing Fee		22282550			4		
412249-401	11/13/2014	Demand for a Jury		22282549	Demand for a Jury	3	4	10365377	View
412249-401	11/13/2014	Objection	OBJECTION TO PLAINTIFFS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-369853	22282544	Objection	7	4	10365373	View
412249-401	11/13/2014	Attorney Assigned		22282540			4		
412249-401	11/10/2014	RECEIPT		22274992			4		
412249-401	11/10/2014	RECEIPT		22273153			4		
412249-401	11/10/2014	RECEIPT		22272926			4		
412249-401	11/10/2014	RECEIPT		22272588			4		
412249-401	11/07/2014	Electronic Filing Fee		22272374			4		
412249-401	11/07/2014	Notice of Hearing	OF ORAL ON 11/17/2014 AT 2:00 PM Film code number PBT-2014-363948	22272371	Notice of Hearing	2	4	10359858	View
412249-401	11/07/2014	Electronic Filing Fee		22272353			4		
412249-401	11/07/2014	Notice of Hearing	NOVEMBER 17, 2014 AT 2:00 PM Film code number PBT-2014-363941	22272350	Notice of Hearing	2	4	10359851	View
412249-401	11/07/2014	Electronic Filing Fee		22272284			4		
412249-401	11/07/2014	Application of Miscellaneous kind	CARL BRUNSTING MOTION TO MODIFY PRELIMINARY INJUNCATION Film code number PBT-2014-363923	22272280	Application of Miscellaneous kind	16	4	10359833	View

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412249-401	11/07/2014	Electronic Filing Fee		22272257					4	
412249-401	11/07/2014	Application of Miscellaneous kind		22272255	Application of Miscellaneous kind	6	4	10359821		View
412249-401	11/07/2014	Electronic Filing Fee		22272253					4	
412249-401	11/07/2014	Responses	PLAINTIFFS RESPONSE TO CANDACE LOUISE CURTIS MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-363907	22272250	Responses	3	4	10359817		View
412249-401	09/18/2014	Legacy Event	ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL FOR ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY AND AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART IT IS ORDERED THAT MAUREEN KUZIK MCCUTCHEN, AND THE LAW FIRM OF MILLS SHIRLEY LLP, ARE PERMITTED TO WITHDRAW AS COUNSEL, SIGNED SEPTEMBER 18, 2014 Film code number PBT-2014-305816	22162700	Legacy Event	2	4	10304906		View
412249-401	09/17/2014	RECEIPT		22159463					4	
412249-401	09/17/2014	Electronic Filing Fee		22158354					4	
412249-401	09/17/2014	Affidavit of Notice		22158349	Affidavit of Notice	8	4	10303114		View
412249-401	09/09/2014	RECEIPT		22141066					4	
412249-401	09/09/2014	Electronic Filing Fee		22140844					4	
412249-401	09/09/2014	Legacy Event		22140841	Legacy Event	7	4	10294095		View
412249-401	09/09/2014	RECEIPT		22140039					4	
412249-401	09/09/2014	Electronic Filing Fee		22139500					4	
412249-401	09/09/2014	Notice of Hearing		22139494	Notice of Hearing	3	4	10293371		View
412249-401	09/04/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FEES IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY, AND	22128646	Miscellaneous Order	2	4	10288845		View

			SHALL HAVE AUTHORITY TO PAY WITHOUT FURTHER ORDER OF THIS COURT AND THAT ALL PAYMENTS REGARDING THE ELMER H. BRUNSTING DECEDENT'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3536 AND THAT ALL PAYMENTS REGARDING THE NELVA F. BRUNSTING SURVIVOR'S TRUST SHALL BE PAID FROM BANK OF AMERICA CHECKING ACCOUNT **3523 SIGNED SEPTEMBER 4, 2014 Film code number PBT-2014-288833	
412249-401	08/27/2014	RECEIPT		22112746 4
412249-401	08/27/2014	Attorney Assigned		22112432 4
412249-401	08/27/2014	Electronic Filing Fee		22112424 4
412249-401	08/27/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS - ORDER NOT ENTERED Film code number PBT-2014-281217	22112417 Miscellaneous Order 2 4 10281595 View
412249-401	08/27/2014	Application of Miscellaneous kind	MOTION TO DISTRINUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SUTVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FES Film code number PBT-2014-281213	22112411 Application of Miscellaneous kind 8 4 10281591 View
412249-401	08/27/2014	RECEIPT		22112225 4
412249-401	08/27/2014	Notice of Hearing	ORAL HEARING SEPTEMBER 4, 2014 AT 10:30 AM Film code number PBT-2014-280737	22111607 Notice of Hearing 2 4 10281133 View
412249-401	08/26/2014	Electronic Filing Fee		22111611 4
412249-401	08/05/2014	Legacy Event	ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE IT	22061276 Legacy Event 7 4 10257689 View

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			IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY ANDREWS KURTH LLP MEDIATION FEE OF $6,500.00, AND ANY ADDITIONAL FEES AGREED TO IN WRITING, ONE HALF OF FEES SHALL BE PAID OUT OF THE DECEDENT'S TRUST AND ONE HALF OUT OF THE SURVIVOR'S TRUST SIGNED AUGUST 4, 2014 Film code number PBT-2014-256006							
412249-401	07/31/2014	RECEIPT		22051332			4			
412249-401	07/30/2014	Electronic Filing Fee		22050838			4			
412249-401	07/30/2014	Application of Miscellaneous kind	AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H BRUNSTING DECEDENT TRUST AND THE NELVA F BRUNSTING SURVIVOR TRUST TO PAY MEDIATOR FEE Film code number PBT-2014-250085	22050837	Application of Miscellaneous kind	7	4	10252018	View	
412249-401	07/09/2014	Agreed Order	DOCKET CONTROL ORDER SIGNED 7/8/14 Film code number PBT-2014-225383	22004818	Agreed Order	3	4	10228889	View	
412249-401	07/03/2014	RECEIPT		21994106			4			
412249-401	07/02/2014	Electronic Filing Fee		21993266			4			
412249-401	07/02/2014	Agreed Order	DOCKET CONTROL ORDER NOT ENTERED Film code number PBT-2014-218797	21993262	Agreed Order	3	4	10222821	View	
412249-401	06/04/2014	Miscellaneous Order	ORDER OF TRANSFER, SIGNED JUNE 3, 2014 Film code number PBT-2014-184792	21926067	Miscellaneous Order	7	4	10191039	View	
412249-401	05/29/2014	RECEIPT		21912730			4			
412249-401	05/28/2014	Electronic Filing Fee		21910726			4			
412249-401	05/28/2014	Application of Miscellaneous kind	MOTION TO ENTER TRANSFER ORDER Film code number PBT-2014-176707	21910722	Application of Miscellaneous kind	7	4	10183535	View	
412249-401	11/27/2013	Certificate	OF WRITTEN DISCOVERY FILE AS IS PER ATTY Film code number PBT-2013-385311	21545003	Certificate	3	4	9993118	View	
412249-401	06/26/2013	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2013-207728	21252737	Certificate	3	4	9825067	View	
412249-401	06/07/2013	Amended	FIRST AMENDED PETITION FOR	21218496	Amended	18	4	9804466	View	

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			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST Film code number PBT-2013-185898						
412249-401	05/31/2013	Amended	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY, AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AS A SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THENELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE ANITA KAY BRUNSTING PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176480	21203560	Amended	6	4	9795773	View
412249-401	05/31/2013	Amended	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARD, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR	21203548	Amended	6	4	9795767	View

			DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURE Film code number PBT-2013-176474						
412249-401	05/29/2013	Certificate	CERTIFICATE OF WRITTEN DISCOVERY Film code number PBT-2013-174241	21200010	Certificate	3	4	9793694	View
412249-401	05/13/2013	Answer	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154981	21167653	Answer	5	4	9776060	View
412249-401	05/13/2013	Answer	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST,	21167647	Answer	5	4	9776056	View

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			AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES Film code number PBT-2013-154977							
412249-401	05/08/2013	Affidavit	JOHN KASPAR Film code number PBT-2013-151609	21161865	Affidavit	1	4	9773018	View	
412249-401	05/08/2013	Affidavit	PETER DOWDLE Film code number PBT-2013-151607	21161863	Affidavit	1	4	9773016	View	
412249-401	05/06/2013	RECEIPT		21154580			4			
412249-401	05/06/2013	RECEIPT		21154256			4			
412249-401	05/03/2013	CounterClaim to Declaratory Judgement (Indep.)	CAROLE ANN BRUNSTING'S SPECIAL EXCEPTIONS AND SUBJECT THERETO ORIGINAL ANSWER AND COUNTERCLAIM Film code number PBT-2013-146160	21153621	CounterClaim to Declaratory Judgement (Indep.)	16	4	9768055	View	
412249-401	04/22/2013	Waiver	CANDACE LOUISE CURTIS Film code number PBT-2013-130579	21129125	Waiver	3	4	9753742	View	
412249-401	04/17/2013	Lawsuit Personal - Out / Private	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 2582 COUNTRY LEDGE, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78132 Film code number PBT-2013-125034	21119975	Lawsuit Personal - Out / Private	1	4	9748703	View	
412249-401	04/17/2013	Lawsuit Personal - Out / Private	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, 203 BLOOMINGDALE CIRCLE, VICTORIA, VICTORIA COUNTY, TEXAS 77904 Film code number PBT-2013-124969	21119825	Lawsuit Personal - Out / Private	1	4	9748652	View	
412249-401	04/16/2013	Citation Returned	SERVED PERSONAL CITATION TO CAROLE ANN BRUNSTING ON 4/15/13 Film code number PBT-2013-124419	21118787	Citation Returned	2	4	9748158	View	
412249-401	04/16/2013	RECEIPT		21117910			4			
412249-401	04/16/2013	Citation Issued	1 PER BY P/P AMY RUTH BRUNSTING F/K/A AMY	21117863			4			

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			RUTH TSCHIRHART 2582 COUNTRY LEDGE NEW BRAUNFELS, COMAL COUNTY, TX 78132	
412249-401	04/16/2013	Citation Issued	1 PERS BY P/P ANITA KAY BRUNSTING F/K/A/ ANITA KAY RILEY 203 BLOOMINGDALE CIRCLE VICTORIA, VICTORIA COUNTY, TX 77904	21117855 4
412249-401	04/10/2013	Lawsuit Personal - Out / Private	CAROLE ANN BRUNSTING, 1333 W LOOP S., STE. 1700, HOU., TX 77027 Film code number PBT-2013-116956	21105451 Lawsuit Personal - Out / Private 2 4 9741475 View
412249-401	04/09/2013	RECEIPT		21103484 4
412249-401	04/09/2013	Civil Case Information Sheet		21103388 Civil Case Information Sheet 1 4 9740263 View
412249-401	04/09/2013	Citation Issued	1 PERS IN -CAROLE ANN BRUNSTING	21103384 4
412249-401	04/09/2013	Declaratory Judgement (Indep.)	PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES 1 PERS IN -CAROLE ANN BRUNSTING Film code number PBT-2013-115617	21103371 Declaratory Judgement (Indep.) 20 4 9740252 View
412249-401	04/09/2013	Folder Created		21103298 4
412249-401	04/09/2013	Case Initiated Application (OCA)		21103297 4

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Probate Search - November 1837 to present

Case Number: 412249-402
Court: All
File Date (From): MM/DD/YYYY (To): MM/DD/YYYY Search

Clear

Images available from Sept. 1, 1999 to present

Last Name First Name Middle Name
Party Attorney Company Search

31 Record(s) Found.

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1658957	412249-402	02/09/2015	ANCILLARY (LAWSUITS CASES) - CONVERSION			Open	CHRISTINE BUTTS	4	Parties

Case	Event Date	Event Desc	Comments							Pgs	
412249-402	02/18/2015	RECEIPT		22485375						4	
412249-402	02/17/2015	Electronic Filing Fee		22484952						4	
412249-402	02/17/2015	Misc. Notice	CHANGE OF NAME AND ADDRESS Film code number PBT-2015-56703	22484948	Misc. Notice	2	4	10465613	View		
412249-402	02/13/2015	RECEIPT		22476353						4	
412249-402	02/13/2015	Electronic Filing Fee		22476352						4	
412249-402	02/13/2015	RECEIPT		22474705						4	
412249-402	02/13/2015	RECEIPT		22474561						4	
412249-402	02/13/2015	RECEIPT		22474556						4	
412249-402	02/12/2015	Electronic Filing Fee		22474261						4	
412249-402	02/12/2015	Application for Continuance		22474257	Application for Continuance	5	4	10459829	View		
412249-402	02/12/2015	Instrument Over 25 Pages		22473922						4	
412249-402	02/12/2015	Electronic Filing Fee		22473921						4	

17-20360.3153

412249-402	02/12/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER Film code number PBT-2015-50259	22473920	Misc. Notice	51	4	10459636	View
412249-402	02/12/2015	Electronic Filing Fee		22473243			4		
412249-402	02/12/2015	Demand for a Jury		22473240			4		
412249-402	02/12/2015	Amended	PLAINTIFF'S SECOND AMENDED PETITION Film code number PBT-2015-49977	22473237	Amended	8	4	10459364	View
412249-402	02/12/2015	RECEIPT		22471096			4		
412249-402	02/11/2015	Electronic Filing Fee		22470519			4		
412249-402	02/11/2015	Notice of Hearing		22470518	Notice of Hearing	2	4	10457956	View
412249-402	02/11/2015	RECEIPT		22469329			4		
412249-402	02/11/2015	Attorney Assigned		22468798			4		
412249-402	02/10/2015	Electronic Filing Fee		22468966			4		
412249-402	02/10/2015	Amended	NOTICE OF FILING OF PLAINTIFFS FIRST AMENDED PETITION Film code number PBT-2015-47716	22468965	Amended	12	4	10457227	View
412249-402	02/09/2015	Receipts	RECEIPT# 1166586 CHARGED $27.00 FOR ENVELOPE NUMBER 40506979 Film code number PBT-2015-47634	22468841	Receipts	1	4	10457152	View
412249-402	02/09/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER FILED PREVIOUSLY ON 2/6/15 Film code number PBT-2015-47630	22468837	Misc. Notice	51	4	10457148	View
412249-402	02/09/2015	Receipts	RECEIPT #1166892 CHARGE THE AMOUNT OF $4.00 FOR ENVELOPE NUMBER 4081121	22468813			4		
412249-402	02/09/2015	Application for Continuance		22468809			4		
412249-402	02/09/2015	Receipts	RECEIPT #1166739 CHARGED $182.00 FOR ENVELOPE #4075218 Film code number PBT-2015-47611	22468807	Receipts	1	4	10457132	View
412249-402	02/09/2015	Motion Pertaining to Lawsuits Only (Indep.)	NOTICE OF FILING OF PLAINTIFF'S ORIGINAL PETITION Film code number PBT-2015-47608	22468802	Motion Pertaining to Lawsuits Only (Indep.)	601	4	10457130	View
412249-402	02/09/2015	Folder Created		22468767			4		

17-20360.3154

412249-402	02/09/2015	Case Initiated Application (OCA)		22468766 4

17-20360.3155

How to steal your family inheritance

Updated on August 2, 2014

Today I received an email asking if I "Want to legally hijack some major cash today?" Sounds intriguing, but as luck would have it, I just this week discovered an ingenious method of hijacking cash (as well as other assets). Ok, so it's not 100% legal. And it takes a little more than a day. But it's most definitely a hijack.

The idea is brilliant in its simplicity: ***Steal your own inheritance.***

I'd like to take credit for it, I really would. Alas, my brain is not wired for financial intrigue. I don't have a criminal mind.

The beauty of this idea is that even the most diabolically challenged (like me) can pull it off.

Step One: The Trust

You will need the following: Two elderly parents, a lawyer, an unsuspecting sibling, and some patience.

First, set up your FAMILY TRUST. There are two components to the trust: financial and medical. Obviously, your interest is in the financial. So as you are sitting with the family and the attorney, "graciously" allow your unsuspecting sibling (US) to be named as the person in charge of medical decisions for your parents. Since parents always want to be fair, they will naturally assign you to the lead financial role. Everyone will be happy. Especially you.

Now in this initial Trust document, there is a first position and a second position. Make sure you get the first financial position. Your US will be put in second position on the financial and you will be put in second position on the medical. This is all fair and square and makes the whole thing appear legit. Mom and Dad's future needs are now legally in the capable hands of their two devoted children. There are two decision makers for medical, two for financial. Lovely.

Read this Blog Before Your $ Gets Stolen

- Inheritance Heisters: Thieves with PhDs | A User's Guide to Guilt Free Thievery

Step 2: The Setup

The Trust may sit gathering dust for some time. That's to be expected. The provisions of the Trust do not come into play until one of the parents becomes ill or dies. This may take some patience on your part. But trust me, it will be well worth the wait.

Now let's say the "triggering event" is that one parent becomes very sick. For the sake of argument, we will say it's the father. Suddenly the Trust document comes down off the shelf. Time to double check who is really authorized to make decisions for Dad's healthcare. Chances are very good that by this time, Mom is pretty distraught and probably not in the best mental shape to be authorizing "chemical code" or "DNR" decisions with Dad's doctors.

This is where having your unsuspecting sibling (US) as the primary healthcare decision-maker on the Trust comes into play. He will be so focused on doing the right thing medically, that he will not be paying any attention whatsoever to the financial side of things. After all, Mom and Dad still have healthcare benefits to pay for Dad's expenses. They still have income coming in. There's really nothing happening at this point that affects the financial aspect of the Family Trust.

At least, that's what US thinks...

Step 3: The Old Switcheroo

While Mom and US are dealing with Dad, you'll be busy in your own way. You'll have several clandestine meetings with your attorney. He or she will give you the high sign when it's time to make your move.

Since it's your own family we're talking about, you will know when the perfect moment arrives. It is imperative to wait until both US and Mom are totally distracted with caring for Dad. Hopefully by this time Dad will be really, really ill. It helps if he needs hospice care, as implementing hospice requires Power of Attorney.

Now assuming your US is like most, he is dead serious about his care-taking duties. He knows hospice is needed. When your lawyer suggests that he (US, not the lawyer) should obtain Power of Attorney, he (US, not the laywer) readily agrees.

However, to make this happen, Mom, who is still listed in the Family Trust, and is not sick or dead yet, needs to be disenfranchised from any and all decision-making power.

How do you accomplish this, you ask? The answer is simple. You get Mom declared **mentally incompetent**!

Step 4: Movin' On Up

If you play this step right you will actually be able to get your US to cooperate as your unwitting accomplice. Have your lawyer tell US that it's a "mere formality" to get Mom declared mentally incompetent. Convince him this formality is necessary for him to get Dad enrolled in hospice.

Your ojbective here is to get US to be the one to obtain the doctor's signature on a form declaring Mom mentally incompetent. Trust me. He will not suspect a thing. He'll do anything/everything he can in the interest of supporting Dad and Mom through this incredibly difficult time.

As soon as you get that signed piece of paper, grab it and run -- don't walk -- to the lawyer's office. You've now got what you need to rewrite the trust in your favor! See how easy that was?

Sing it Queen -- I got a one track mind!

Step 5: Grab those Assets

With Dad now on his deathbed, both Mom and US are 100% distracted. They will have no idea what you're masterminding over at the old attorney's office. It will be months before they find out -- and by then it will be too late. Hehe.

So here's how this works:. Now that Dad is out of the picture (figurately for now, literally in a matter of weeks or days), that leaves only Mom to contend with. Oh wait! Remember, we got Mom declared mentally incompetent. So that means that the original trust document is no longer valid. Mom is officially legally incapable of making financial decisions for herself. Luckily, she has you, her faithful Trust executor, to make them for her!

Oh my! And what a conscientious little trust administrator you are! You are so on top of things and so diligent about managing the Family Trust that you don't waste a second. No sirree. The minute you get get that "mental incompetence" declaration signed, you get the lawyer to rewrite any/all sections of the Trust document that don't suit ***your*** needs, and off you go!

Money for Nothing

Step 6: Laugh all the Way to the Bank

De facto, you are now the only person with any legal claim to the Trust. With the mere stroke of a pen, you've obliterated both Mom and US from the document. Instead of the Family Trust, you could just as well title the revised document The Bank of Me.

Now, at some point after Dad kicks, US will probably regain his mental equilibrium. This is not to be confused with Mom -- her mental competency is gone, baby gone. It's signed, sealed and delivered on that scrap of paper her doctor signed. But US will eventually start poking his nose around the finances. You see, being a true caretaker at heart, he's still got a vested interest in making sure Mom's taken care of, now that she's a widow. And that means both physically/emotionally and financially.

No worries, however. US can't touch you or Mom's money. He's been summarily written out of the Trust document. That lawyer the whole family worked with to write the original document? Sorry, brother. That lawyer now represents you and only you. Not Mom and not US. YOU are the Trust. They are -- well, they are toast.

FILED
11/13/2014 12:11:57 PM
Stan Stanart
County Clerk
Harris County

11/13/2014 09:04:P0058

PROBATE COURT 4

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, Individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
v.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal Defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

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Electronically Filed 2014-09-24 09:04:23 AM

OBJECTION TO PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

COMES NOW, Carole Ann Brunsting ("Carole Brunsting"), daughter of Nelva E. Brunsting, Deceased ("Decedent"); a beneficiary of the Estate of Nelva E. Brunsting, Deceased ("Estate"); and a beneficiary of The Brunsting Family Living Trust ("Trust"), and files this Objection to Plaintiff's Motion for Distribution of Trust Funds filed by Plaintiff, Candace Louise Curtis ("Plaintiff"):

I.
BACKGROUND

1. Plaintiff first filed her suit against her siblings, Anita Brunsting, Amy Brunsting, and Carole Brunsting, regarding the Trust in United States District Court for the Southern District of Texas.[1] Plaintiff's suit was subsequently transferred to this Court on June 4, 2014, pursuant to an Order of Remand entered by the Federal Court.

2. Plaintiff's Petition was filed in bad faith, without just cause, and frivolously – especially with respect to filing her Petition in federal court knowing there was already litigation pending on the same issues in this Court.

3. On or about October 20, 2014, Plaintiff filed her Motion for Distribution of Trust Funds ("Motion") requesting that this Court authorize the payment of $24,171.26 out of the Trust for attorney's fees and expenses allegedly incurred by her in prosecuting her frivolous Petition. Plaintiff's Motion, like her Petition, is wholly without merit, filed in bad faith, and is detrimental to Carole Brunsting, who is defending against the lawsuits in this cause out of her own pocket. Plaintiff should not be able to use the Trust to bankroll the lawsuit she is pursuing in bad faith.

[1] Cause No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting, et. al; In the United States District Court for the Southern District of Texas.

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II.
OBJECTIONS

4. Carole Brunsting objects to Plaintiff's Motion because (1) the Trust is currently the subject of this litigation; (2) Plaintiff's suit and Motion have been brought in bad faith and without just cause; (3) and Plaintiff has proffered no evidence that the attorney's fees and expenses allegedly incurred by her and subject of her Motion are reasonable and necessary. Accordingly, Plaintiff's Motion should be denied.

5. First, this case involves, in large part, questions regarding the administration and distribution of the Trust. Until the litigation pertaining to the Trust is resolved, distributions from the Trust should only be made for necessaries, such as paying taxes on Trust assets. Plaintiff should not be allowed to fund her lawsuit pending against other Trust beneficiaries with Trust funds.

6. Second, Plaintiff's Petition was brought in bad faith, without just cause, and frivolously. Unless and until Plaintiff is found to have brought her lawsuit in good faith and with just cause, she is not entitled to the payment of her attorney's fees and expenses out of the Trust funds. To allow Plaintiff access to Trust funds to subsidize her lawsuit would substantially prejudice Carole Brunsting, who is defending against the lawsuits in this cause out of her own funds.

7. Finally, Plaintiff has not provided one document or invoice to support her Motion. Plaintiff seeks a distribution to pay her attorney's fees and expenses allegedly incurred in this proceeding in the amount of $24, 171.26, but there is no backup to support this amount. Carole Brunsting demands that the backup, including invoices, be produced by Plaintiff before the hearing on Plaintiff's Motion.

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WHEREFORE, PREMISES CONSIDERED, Carole Brunsting prays that the Court deny Candace Louise Curtis' Motion for Distribution of Trust Funds and for all other relief to which she may show herself justly entitled.

Respectfully submitted,

CRAIN, CATON & JAMES,
A Professional Corporation

By: _____

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Attorneys for Carole Ann Brunsting

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17-20360.3162

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was forwarded to:

Ms. Bobbie G. Bayless
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2931 Ferndale
Houston, Texas 77098
(713) 522-2218 (facsimile)

Mr. Jason Cox
Ms. Nicole Sain Thornton
OSTROM SAIN
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006

Ms. Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904

Ms. Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, Texas 78132

by facsimile, hand delivery, and/or certified mail, return receipt requested, on this 13th day of November, 2014.

DARLENE PAYNE SMITH
COURTNEY MCMILLAN LYSSY
LORI A. WALSH

011275/000001
380 - 1288306v1

FILED: 4/25/2014 4:00:45 PM

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	
CARL HENRY BRUNSTING, Individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
v.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal Defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS

ORDER DENYING PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

On this day the Court considered Plaintiff's Motion for Distribution of Trust Funds filed by Candace Louise Curtis, and the Court, having considered the Motion, any response thereto, and the arguments of counsel, finds and is of the opinion that the Motion should be DENIED. It is therefore,

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11/1/2016 4:05:41 PM : Pg 014

ORDERED, that Candace Louise Curtis's Motion for Distribution of Trust Funds is DENIED.

SIGNED on this _____ day of _____, 2014.

_____
JUDGE PRESIDING

APPROVED AS TO FORM:

CRAIN, CATON & JAMES,
A PROFESSIONAL CORPORATION

By: _____

DARLENE PAYNE SMITH
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Attorneys for Carole Ann Brunsting

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DATA-ENTRY
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FILED
12/9/2014 7:11:56 AM
Stan Stanart
County Clerk
Harris County

12/10/2014:0944:P0055

PROBATE COURT 4

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

---

	§	
CARL HENRY BRUNSTING, Individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
v.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal Defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF
	§	HARRIS COUNTY, TEXAS

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380 - 1307784v1

20170120141450:1905095

OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

COMES NOW, Carole Ann Brunsting ("Carole Brunsting"), daughter of Nelva E. Brunsting, Deceased; a beneficiary of the Estate of Nelva E. Brunsting, Deceased; and a beneficiary of The Brunsting Family Living Trust ("Trust"), and files this Objection to Carl Brunsting's Motion for Distribution of Trust Funds filed by Plaintiff, Candace Louise Curtis ("Plaintiff").

I.
BACKGROUND

1. On or about April 9, 2013, Plaintiff, Carl Henry Brunsting ("Plaintiff"), filed his Petition for Declaratory Judgment for an Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief ("Petition") against his sisters, Amy Brunsting, Anita Brunsting, and Carole Brunsting, in various capacities. Plaintiff's lawsuit against Carole Brunsting was filed in bad faith, without just cause, and frivolously.

2. On or about November 7, 2014, Plaintiff filed his own Motion for Distribution of Trust Funds ("Motion") to pay his attorney's out of the Trust. Plaintiff's Motion, like his Petition, is wholly without merit, filed in bad faith, and is detrimental and unfairly prejudicial to Carole Brunsting, who is defending against the various lawsuits in this cause out of her own pocket. Plaintiff should not be able to use the Trust to bankroll the lawsuit he is pursuing in bad faith.

II.
OBJECTIONS

3. Carole Brunsting objects to Plaintiff's Motion because (1) the Trust is currently the subject of this litigation; (2) Plaintiff's suit and Motion have been brought in bad faith and without just cause; (3) and Plaintiff has proffered no evidence that the attorney's fees and expenses allegedly incurred by him and subject of his Motion are reasonable and necessary. In

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fact, Plaintiff has failed to produce a single invoice or proof of payment for attorney's fees and costs allegedly incurred by him. Accordingly, Plaintiff's Motion should be denied.

4. This case involves, in large part, questions regarding the administration and distribution of the Trust. Until the litigation pertaining to the Trust is resolved, distributions from the Trust should only be made for necessaries, such as paying taxes on Trust assets. Plaintiff should not be allowed to fund his lawsuit pending against other Trust beneficiaries with Trust funds.

5. Second, Plaintiff's Petition was brought in bad faith, without just cause, and frivolously. Unless and until Plaintiff is found to have brought his lawsuit in good faith and with just cause, he is not entitled to the payment of his attorney's fees and expenses out of the Trust funds. To allow Plaintiff access to Trust funds to subsidize his lawsuit would substantially prejudice Carole Brunsting, who is defending against the lawsuits in this cause out of her own funds.

6. Finally, Plaintiff has not provided one document or invoice to support his Motion. Plaintiff seeks a distribution to pay his attorney's fees and expenses allegedly incurred in this proceeding in an unspecified amount of, but there is no backup to support a single penny sought by Plaintiff. Carole Brunsting demands that the backup, including invoices and any payments thereon, be produced by Plaintiff before the hearing on Plaintiff's Motion.

WHEREFORE, PREMISES CONSIDERED, Carole Brunsting prays that the Court deny Carl Brunsting's Motion for Distribution of Trust Funds and for all other relief to which she may show herself justly entitled.

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Respectfully submitted,

CRAIN, CATON & JAMES,
A Professional Corporation

By: _____

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Attorneys for Carole Ann Brunsting

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12/02/2014:09:44:26 PAGE 5 OF 6

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was forwarded to:

Ms. Bobbie G. Bayless
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2931 Ferndale
Houston, Texas 77098
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Mr. Jason Cox
Ms. Nicole Sain Thornton
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Ms. Anita Kay Brunsting
203 Bloomingdale Circle
Victoria, Texas 77904

Ms. Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, Texas 78132

by facsimile, hand delivery, and/or certified mail, return receipt requested, on this 9th day of December, 2014.

DARLENE PAYNE SMITH
LORI A. WALSH

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I hereby certify that on 10/15/2014 09:44:00 AM
Teresa Hawthorne
County Clerk
Harris County, Texas

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	
CARL HENRY BRUNSTING, Individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting	§	IN PROBATE COURT
v.	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal Defendant only, CANDACE LOUISE CURTIS	§	NUMBER FOUR (4) OF HARRIS COUNTY, TEXAS

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ORDER DENYING CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

On this day the Court considered Carl Brunsting's Motion for Distribution of Trust Funds and the Court, having considered the Motion, any response thereto, and the arguments of counsel, finds and is of the opinion that the Motion should be DENIED. It is therefore,

12/02/2014 09:49:20 AM

ORDERED, that Carl Brunsting's Motion for Distribution of Trust Funds is DENIED.

SIGNED on this _____ day of _____, 2014.

_____
JUDGE PRESIDING

APPROVED AS TO FORM:

CRAIN, CATON & JAMES,
A PROFESSIONAL CORPORATION

By: _____
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County Clerk
Harris County

PROBATE COURT 4

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NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, et al	§	

RESPONSE TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

Defendant Anita Kay Brunsting files this response to Candace Louise Curtis' Motion for Distribution of Trust Funds and this response to Carl Brunsting's Motion for Distribution of Trust Funds and would respectfully show the Court as follows:

I. Summary of the Argument

1. Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.

2. Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.

3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.

4. If the Court finds the *in terrorem* clause is enforceable, then Candace and Carl have no right to any distribution from the trust.

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II. Argument & Authorities

Candace and Carl seek distributions from the trusts to pay their creditor-attorneys.

Neither Candace nor Carl cite any provision in the trust instruments that would allow for the requested distributions. This is a tacit admission that such distributions are not authorized by the trust instruments.

Neither Candace nor Carl cite any legal authority that would allow for the requested distributions. This is a tacit admission that such distributions are not permitted by any legal authority.

Since there is nothing in the trust instruments or in any legal authority that allows the requested distributions, the motions must be denied.

A. The Brunsting Family Living Trust.

With respect to distributions under the Brunsting Family Living Trust, the instrument provides:

> i. Distributions of Net Income
>
> Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the net income from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.
>
> ii. Distributions of Principal
>
> Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the principal from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.[1]

[1] Exhibit 1, Restatement of the Brunsting Family Living Trust, pages 10-1 to 10-12.

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Furthermore, the trust instrument prohibits the trust from being charged with a beneficiary's debt:

> No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.[2]

Finally, the trust instrument provides:

> All trusts created under this agreement shall be administered free from the active supervision of any court.[3]

B. The Qualified Beneficiary Designation.

With respect to distributions under the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), the instrument provides:

> The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for the benefit for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as Trustee shall deem appropriate for such distributees' health, support, maintenance, and education.[4]

Furthermore, the QBD contains spendthrift provisions that prohibit the requested distribution:

---

[2] Exhibit 1, Restatement of the Brunsting Family Living Trust, page 11-1.

[3] Exhibit 1, Restatement of the Brunsting Family Living Trust, page 4-5.

[4] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 7-8.

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> [N]either the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary.[5]

The QBD stated purpose includes:

> (1) To protect trust assets and income from claims of and interference from third parties; and
> (2) To protect the beneficiary against claims of third parties.[6]

Finally, the QBD states:

> It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution, or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will.[7]

C. Attorneys Fees are not "Health, Education, Maintenance and Support."

Under both the Brunsting Family Living Trust and the QBD, the distributions are: (1) subject to the sole and absolute discretion of the trustee; and (2) as the trustee deems advisable for the health, education, maintenance and support of a beneficiary. Carl's and Candace's attorneys' fees

---

[5] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

[6] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 5-6, ¶¶ 4 and 10.

[7] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

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sought in their motion are not for their health, education, maintenance and support.[8] Accordingly, the requested distributions are not authorized by the trust.

D. The Requested Distributions Violate the Spendthrift Provisions.

The sprendthrift provisions plainly state they are designed to prevent interference and claims of third parties. Candace's and Carl's attorneys are third parties. When the spendthrift provisions of the trust and the *in terrorem* provisions are analyzed together, it becomes abundantly clear that the trust was not intended to pay Candace's and Carl's attorneys fees in this case. Accordingly, the requested distributions are prohibited by the trust.

E. There is No Justiciable Case or Controversy with Respect to the Request Distribution.

In the case of *Di Portanova v. Monroe*, the First District Court of Appeals explained:

> Under a discretionary trust, the beneficiary is entitled only to the income or principal that the trustee, in his discretion, shall distribute to the beneficiary. The beneficiary of a discretionary trust cannot compel the trustee to pay him or to apply for his use any part of the trust property, nor can a creditor of the beneficiary reach any part of the trust property until it is distributed to the beneficiary. A court cannot substitute its discretion for that of a trustee, and can interfere with the exercise of discretionary powers only in cases of fraud, misconduct, or clear abuse of discretion.
>
> A court of equity has no right to interfere with and control, in any case, the exercise of a discretionary power, no matter in whom it may be vested; a corporate body or individuals, the aldermen of a city, the directors of a bank, a trustee, executor or guardian; and I add, that meaning and principle of the rule, and the limitations to which it is subject, are in all the cases to which it applies, exactly the same. The meaning and principle of the rule are, that the court will not substitute

[8] Although defendant was unable to find a case directly on point, the case of *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651 (Tex. 2013) appears instructive. The Texas Supreme Court held that attorneys fees in a divorce proceeding were not "necessaries." Defendant recognizes that there is a difference between "necessaries" and the HEMS standard, but nevertheless believes the HEMS standard would not include plaintiffs legal fees in the case at bar.

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> its own judgment for that of the party in whom the discretion is vested, and thus assume to itself a power which the law had given to another[.]
>
> In the absence of evidence of mala fides, the courts are disinclined to interfere where the trustee has been given discretionary powers . . . . The court will refuse to review his decision in the absence of a showing that he did not exercise his discretion in good faith or that his decision was unreasonable; for the trustee in such case stands in the position of an arbitrator.[9]

The First District Court of Appeals ultimately held that the ultimate issue decided by the trial court did not present a justiciable controversy for the trial court to resolve because the issue should have been left to the Trustees' discretion.[10]

Here, Candace and Carl ask this Court to usurp the powers of the trustees and substitute the court's discretion for that of the trustees in violation of the trust. The Court has no jurisdiction to make such determination, because there is no justiciable controversy for the trial court to resolve. There is no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.[11] Even if Candace and Carl made such allegations, there is no evidence to support such allegations.

F. No Contest Clause - Carl and Candace May Not Have An Interest.

Both Carl and Candace appear to concede that they have violated the trust's *in terrorem* clause. Both filed a declaratory judgment action asking this Court to rule that the trust's *in terrorem* clause is overly broad, against public policy, and not capable of enforcement, but neither challenges

---

[9] *Di Portanova v. Monroe*, 229 S.W.3d 324, 330-331 (Tex. App.–Houston [1st Dist.] 2006, pet. denied)(internal citations omitted).

[10] *Id.* at 331.

[11] *See* Candace's Motion and Carl's Motion.

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that their acts to date violated the *in terrorem* clause.[12]

If it is determined that the trust's *in terrorem* clause is capable of enforcement, then Carl and Candace do not have an interest in the trust.

If Carl and Candace do not have an interest in the trust, then there is no right to a distribution. Thus, until the Court resolves the *in terrorem* clause issues, there cannot be distributions to Carl and Candace. Furthermore, even if the *in terrorem* clause issues are resolved in favor of Carl and Candace, the requested distributions cannot be made for the reasons discussed above.

III. Prayer

For these reasons, Defendant Anita Kay Brunsting prays that Candace's and Carl's motion for distribution of trust funds be denied and that Defendant Anita Kay Brunsting receive all other relief, general and special, legal and equitable, to which she or the trust may be entitled.

Respectfully submitted,

/s/ Brad Featherston

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In Capacities at Issue

[12] Exhibit 3, Carl's First Amended Petition; Exhibit 4, Candace First Amended Petition.

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Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

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Amy Ruth Brunsting
2582 Country Ledge
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Pro Se

via e-service or telefax on December 5, 2014, to Jason B. Ostrom, Bobbie G. Bayless, and Darlene Payne Smith, and by email to Amy Ruth Brunsting.

/s/ Brad Featherston

Bradley E. Featherston

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CAUSE NO. 2013-05455

CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING,	)	IN THE DISTRICT COURT OF
Plaintiffs,	)	
V.	)	HARRIS COUNTY, TEXAS
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC,	)	
Defendants.	)	164TH JUDICIAL DISTRICT

****

ORAL AND VIDEOTAPED DEPOSITION OF
CARL H. BRUNSTING
FEBRUARY 3, 2015

****

ORAL AND VIDEOTAPED DEPOSITION of CARL H. BRUNSTING, produced as a witness at the instance of DEFENDANTS, and duly sworn, was taken in the above-styled and numbered cause on FEBRUARY 3, 2015, from 10:06 a.m. to 1:05 p.m., before Stephanie M. Harper, RPR, CSR in and for the State of Texas, recorded by machine shorthand, at the offices of THOMPSON, COE, COUSINS & IRONS, LLP, One Riverway, Suite 1600, Houston, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed before any notary public.

JOB NO. 177755

A P P E A R A N C E S

FOR PLAINTIFFS:

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VIDEOGRAPHER:

MS. BRANDI MATHESON

ALSO PRESENT:

MS. DRINA BRUNSTING
MS. CANDACE L. KUNZ-FREED

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ORAL AND VIDEOTAPED DEPOSITION OF
CARL H. BRUNSTING
FEBRUARY 3, 2015

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ORAL AND VIDEOTAPED DEPOSITION OF
CARL H. BRUNSTING
FEBRUARY 3, 2015

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THE VIDEOGRAPHER: On the record, 10:06, Tape 1.

CARL H. BRUNSTING,

having been first duly sworn, testified as follows:

E X A M I N A T I O N

BY MS. FOLEY:

Q. Hello, Mr. Brunsting. My name is Zandra Foley, and I represent Candace Freed and her law firm in this lawsuit. Could you please state your full name for the record.

A. Carl Henry Brunsting.

Q. Okay. Have you ever given a deposition before?

A. Not that I remember. I don't know, yeah.

Q. Okay. I'm sure your lawyer's already talked to you about it, but I'm just going to go over a couple of housekeeping rules. No. 1 is sometimes you're going to be able to anticipate the question that I'm asking. But I'm going to do my best to not talk over you.

A. Okay.

Q. And I just ask that you not talk over me, just because there's a court reporter here who's taking everything down, and we just want to make sure that the record is clear.

The second thing is that if I ever ask you a

question that you don't understand, let me know that you don't understand it --

A. Thanks.

Q. -- And I will be happy to rephrase it.

Also you're doing a good job right now answering audibly, meaning you're saying "yes," "no." Please continue to do that, because the court reporter can't take down --

A. Right.

Q. It's harder to -- shaking heads, and "uh-huh" and "huh-uh." And so sometimes I may even -- if you just happen to say "uh-huh" or "huh-uh," then what I'll do is I'll say, "Is that a 'yes' or a 'no'?"

A. Yeah, right.

Q. And if I do that, I'm not trying to be ugly. I'm just trying to make sure we've -- we've got a clean record.

The last thing is that if you need to take a break for any reason at all, you just say so and we'll take a break. The only thing that I ask is that if there is a question that's on the floor, if you could please answer that question first, and then --

A. Yeah.

Q. -- and then we can take the break, all right?

A. Um-hmm.

Q. Okay. What is your date of birth?
A. July 31st, 1957.
Q. Okay. And what are your parents' names?
A. Elmer and Nelva Brunsting.
Q. Okay. And I understand you have some sisters; is that correct?
A. Yes.
Q. Okay. How many sisters do you have?
A. Four.
Q. Okay.
A. Yeah.
Q. And what are their names?
A. Candy, Carol, Amy, and Anita.
Q. Okay. Do you have any children?
A. Yes.
Q. How many children do you have?
A. One.
Q. And what's your child's name?
A. Marca, M-A-R-C-A.
Q. Where does she live?
A. North Houston. I can't remember the name of the town, but out in the country just west of Conroe kind of.
Q. Okay. Have you ever been married before?
A. No.

Q. Okay.
A. I mean, other than this one? No.
Q. Right. Correct. Okay. But you are currently married --
A. Yes, uh-huh.
Q. -- correct?
And what is your wife's name?
A. Drina.
Q. Okay. And how long have you been married?
A. Oh, I think 32 -- -3 years, yeah.
Q. Okay. Where did you grow up?
A. Born in Pryor, Oklahoma, and then moved to Kansas City, Kansas; Kansas City, Missouri; and down to Houston.
Q. Okay.
A. Yeah.
Q. Where did you go to high school?
A. In Westchester here in Houston.
Q. And after high school, what did you do?
A. Went to A&M for undergraduate, and then to Rice for graduate school.
Q. What did you study at A&M?
A. Archi- -- environmental architecture or environmental design. They didn't call it architecture, but -- yeah.

Q. Okay. And did you get a BS --
A. Yes.
Q. -- a Bachelor of Science?
A. Yeah, yeah.
Q. What year did you come out of A&M?
A. I have to think about that. Sorry.
I was 21, so -- yeah. 1978, yeah. I don't -- yeah.
Q. Okay. And then after you left A&M, where did you go?
A. Rice.
Q. What did you study at Rice?
A. A Master's in Architecture.
Q. Okay. And how long did it take you to get out of Rice?
A. Two years.
Q. After leaving Rice, what did you do?
A. We got married after Rice, yeah.
Q. Okay. Did you meet your wife at Rice?
A. No, no.
Q. Okay.
A. We met before that.
Q. Okay. Did you get -- become employed after you graduated from Rice?
A. Yes, uh-huh.

Q. And where is the first place that you worked?
A. Charles Tapley, Tapley Luna Architects in -- on Sunset here in -- in Houston, yeah.
Q. Okay. What did you do for them?
A. Architecture, yeah. I got registered, and, you know, did a lot of residential things, but, yeah.
Q. Okay. How long did you work for that company?
A. I'd say 18 years or so.
Q. And after you left there, did you go work somewhere else?
A. No, I worked for myself, yeah.
Q. Okay. What was the name of your business called?
A. Carl Brunsting Architecture. I don't know actually --
Q. Okay. Other than yourself --
A. -- yeah.
Q. I'm sorry. Go ahead.
A. I'm sorry. That's right.
Q. I'm sorry. I thought I interrupted you.
A. No, you're fine.
Q. Other than yourself, was there anybody else who was employed by your architecture firm?
A. No, only a secretary. Nothing -- no, not that I remember.

Q. Okay. Is that business still in existence today?

A. No, uh-uh.

Q. When did you stop working under that business name?

A. About five years ago.

Q. Okay. And why did you stop working?

A. My illness.

Q. Okay. How old is your daughter again? I'm sorry.

A. I'd say 32, but I'm not sure.

Q. Okay. Okay. All right. Other than the -- the two jobs we just talked about --

A. Um-hmm.

Q. -- have you worked anywhere else since getting out of Rice?

A. Hmm-um.

Q. I'm sorry. Is that a "no"?

A. Um-hmm.

Q. Could you say "no"?

A. No, I didn't.

Q. Okay. Sure. And that's just --

A. Yeah.

Q. -- to keep the record clear.

A. I worked at Charles's and then was

self-employed, yeah.

THE REPORTER: I worked at what?

THE WITNESS: Charles Tapley -- Tapley Luna Architects and -- and was self-employed after that, yeah.

Q. (BY MS. FOLEY) Okay. Okay. Now I want to ask you some questions about the illness that you -- that you referred to.

What was your diagnosis?

A. I'll say encephalitis but I'm -- yeah.

Q. Okay. And what -- do you remember when you first became ill?

A. About five years ago, and it just kind of hit me.

Q. Okay. When -- when you say it kind of hit you, what do you mean by -- by that?

A. That it just ended. I mean, I was nearly dead, yeah.

Q. Okay. Were you hospitalized?

A. Yes, um-hmm.

Q. And do you know how long you were hospitalized?

A. I don't know.

Q. Okay. Is that what also made you stop working; you stopped working after you fell ill?

A. Oh, yeah, yeah.

Q. Okay. Do you know if the encephalitis that you were diagnosed was, was it viral or bacterial?

A. (Shook head.)

Q. You don't know? I'm sorry. Is that --

A. No, I don't know.

Q. Okay. Do you remember who treated you for that illness?

A. Well, somebody in the Medical Center, but mostly my wife did, yeah.

Q. Okay. Do you remember the name of any of your doctors?

A. No.

Q. And what is your understanding of the -- the -- the symptoms of your illness?

A. It unplugged my brain. I mean, they were every -- yeah.

THE REPORTER: Repeat your answer?

THE WITNESS: It unplugged my brain, my loss of memory and ability for -- yeah.

Q. (BY MS. FOLEY) Okay. What treatment did you have to take after you got out of the hospital?

A. Exercising, good food, and -- yeah, just kind of growing back and getting back again, yeah.

Q. Okay. Did you have to take medication?

A. Probably, but I don't remember, yeah.
Q. Okay. Are you on any medication today?
A. Some vitamins and -- uh-huh.
Q. Other than vitamins, are you on any prescription medication?
A. Hmm-um.
Q. I'm sorry. Is that a "no"?
A. No. No.
Q. Okay. And before today, have you been taking prescription medication to treat your illness?
A. No. Not recently. Yeah.
Q. Okay. Are you currently seeing a doctor for your illness?
A. (Shook head.)
Q. Is that a "no"?
A. No, uh-uh. Not -- not -- no, uh-uh.
Q. Okay. What type of, I guess -- well, strike that. Do you currently still suffer from any symptoms or injuries as a result of your illness?
A. There's some feeling that's coming back down there where it was numb. My feet and my groin, and again it's more normal now.
Q. Okay. And what about as far as like your -- your mental faculties, have you been, I guess, told by a doctor that you have effects as a result of your

illness?

A. I don't know if I've been told by the doctor, but, yeah. I mean five years ago, I didn't know where I was born and what had happened, and then my memory came back through my life.

Q. Okay.

A. And now I'm designing things, and driving and tasting things properly, yeah, because of treatment, because of getting through it, yeah.

Q. Okay. And -- and you say "treatment." What kind of treatment are you referring to?

A. Exercise and good food, yeah.

Q. Okay. But you're not -- you're not talking about seeing a doctor or anything?

A. Not -- not recently, no, uh-uh.

Q. Okay. Do you remember when was the last time you saw a doctor?

A. I don't know.

Q. Do you have any current plans today to see a doctor in the future?

A. No, uh-uh.

Q. Do you remember what year it was that you became ill?

A. Five years ago, so it was 2009. Yeah, 2009, yeah.

Q. Okay. 2009 or 2010 --
A. Yeah.
Q. -- maybe?
A. Yeah. Not 2010, but 2009.
Q. 2009, okay.
Prior to 2009 --
A. Um-hmm.
Q. -- did you -- other than the job that you had working for your own company --
A. Um-hmm.
Q. -- did you have any other income at that time?
A. No.
Q. Okay. Did your wife work?
A. Yeah, uh-huh.
Q. Okay. What did she do?
A. A nurse, uh-huh.
Q. Okay. And does she still work today?
A. Yes, she's just started again, yeah.
Q. Okay. After your illness, did you -- was there -- well, strike that.
After your illness, did you receive income from any other place?
A. No.
Q. So you didn't have any income after you became ill?

A. No, uh-uh.

Q. Okay. After you became ill, did you receive financial assistance from any of your family members?

A. Well, we just did, yeah.

Q. I'm sorry?

A. Yes, we did. Just got an inheritance from Drina's dad who died.

Q. Okay. And when was that?

A. A few months ago now.

Q. Okay. Going back to after you fell ill --

A. Um-hmm.

Q. -- so back in 2009 --

A. Um-hmm.

Q. -- do you know whether or not somebody in your family or otherwise provided you with financial assistance after you fell ill?

A. No. No one did.

Q. No one did?

A. No.

Q. Okay. Do you know whether or not your mother provided you any financial assistance after you fell ill?

A. Not that I know of, no, but -- asked about my mom. I'm sorry, no. Can't tell you about her.

Q. You can't tell me about her?

A. She was unhappy about -- she was glad to see me getting back before she died, and just --

Q. Ok.

A. -- anyway.

Q. With respect to -- to your mother before you --

A. Um-hmm.

Q. -- fell ill, do you have any -- or do you know what her physical state was; was she healthy?

A. She was 88 and getting old, and could hardly talk. But she had people -- somebody taking care of her at home.

Q. Okay. Did you provide her with any financial assistance?

A. No.

Q. Okay. Do you know if any of your other siblings did?

A. I don't know.

Q. Okay. After you became ill in 2009 --

A. Um-hmm.

Q. And eventually you got out of the hospital, correct?

A. Yeah. Sure. Oh, yeah.

Q. Okay. After you got out of the hospital, did you go home to live?

A. Yes. Yeah.

Q. Okay. And do you still live -- live in the same house that you went home to today?

A. Yeah, yeah.

Q. Okay. Was there ever a time that you actually went to live with your -- your mother --

A. No.

Q. -- after your illness?

A. Actually, there was a little short time. I can't remember, yeah.

Q. Okay. And do you remember why you went to go live with your mom for that short time?

A. No. Drina had to go out of town or something. I'm not sure.

Q. Okay. During the time that you were staying with your mom, did you have an occasion to help her with any of her finances or anything like that?

A. No, not at all.

Q. Okay.

A. I was just getting back myself, I mean -- yeah.

Q. Right. Was she taking care of you during that time?

A. No, no. There was a sort of helper there that was doing -- taking care of both of us, yeah.

Q. Okay. Who was that helper?
A. I don't know.
Q. Okay. Was it one or more than one person?
A. Actually, I don't know if there might have been two, but it was one that was normally the one who was there.
Q. Um-hmm. Okay. As a result of your illness, did you have to have any type of surgery or anything like that?
A. No. Well, what I've had recently. I just can't remember. I'm sorry. No, I just had some little minor things.
Q. Minor things like what?
A. (Pauses.)
Q. You can't recall?
A. I don't know what. No, uh-uh.
Q. Okay. And when you -- are -- are you thinking of thing that happened in the hospital or...
A. No, afterwards. Treatment of -- yeah.
Q. Okay. Did -- did the helpers who kind of helped you out around the house, did they ever come and provide you with any treatment per doctor's orders?
A. Not at all, no.
Q. Okay.
A. They were maid -- not maids, but, yeah.

Q. Um-hmm. During the time that you were living at home after your illness --

A. Um-hmm.

Q. -- other than your wife, did -- was there any nurse who would come by your home to check on you?

A. No, not at all, huh-uh.

Q. What about any doctors' visits while you were at home?

A. No.

Q. Okay. Do you recall if you saw more than one doctor for your illness?

A. No, I don't.

Q. Okay. Do you recall any of the doctors you saw?

A. Hmm-um.

Q. You don't recall their names?

A. No.

Q. During the time that you were staying with your mother, were you the only one of your siblings, say, staying with her at that time?

A. Um-hmm.

Q. And then other than the people that were kind of helping out, was there anyone else living in the house at that time?

A. No, uh-uh.

Q. Since you were ill and got out of the hospital, did your mother ever provide you with any gifts, financial gifts?

A. No, not that I know of, huh-uh.

Q. Do you know whether or not your mother provided any of your other siblings with any gifts?

A. Not that I know of, no.

Q. Did your siblings ever come to -- to see you after you got out of the hospital?

A. Yes.

Q. Okay. Did all of them or just some of them?

A. No, two that I remember when I was at my mom's house. They came in, kind of checked in to --

Q. Okay. Do you remember which two that was?

A. Anita and Carol.

Q. Okay. And were you close to Anita and Carol?

A. No.

Q. Are you close to any of your sisters?

A. No.

Q. Well, are all of your sisters your biological sisters?

A. No, the oldest one, Candy, was adopted.

Q. Okay.

A. Yeah. And the -- and the rest of them were, yeah.

Q. Be- -- Before you fell ill --
A. Um-hmm.
Q. -- who was -- what -- did any one of the siblings or you -- who was the main person caring for your mom?
A. I don't know.
Q. Okay. Do you know Candace Freed?
A. Name is familiar. I don't know.
Q. Okay. Do you know this lady who's sitting right besides me?
A. Hmm-um.
Q. Okay. Before you became ill, did you ever have an opportunity to speak with any of your -- your mom's lawyers?
A. (Shook head.)
Q. Is that a "no"? You have to say audibly.
A. Yeah, no, no. I'm sorry.
Q. Okay. Do you ever recall meeting with anybody who claimed to be an attorney for your mother?
A. (Shook head.)
Q. Is that a "no"?
A. No. No.
Q. Sorry.
A. That's all right.
Q. And you under -- you understand that we're

here today because you filed a -- a lawsuit --
A. Um-hmm.
Q. -- against Ms. Freed and her firm, correct?
A. Um-hmm. Um-hmm.
Q. Why did you file that lawsuit?
A. Because of what she's doing that -- I don't know. She's illegally doing -- trying to cover up what the -- her side did, yeah.
Q. Okay. Any other reason?
A. (Shook head.)
Q. I'm sorry. That's a "no"?
A. No.
Q. Okay. What did you do, if anything, to prepare for your deposition today?
A. Thought about getting back and thought about what's happened, yeah.
Q. Okay. Did you -- other than your lawyer, did you talk to anyone to prepare for your deposition today?
A. With my wife, yeah.
Q. Okay. And what did y'all talk about?
A. What was done against me and my mom to -- to handle things and -- sorry, let me think a minute.
Q. Sure.
A. (Pauses.)

Q. Can you -- can you recall anything specific y'all spoke about?

A. Who?

Q. You and your wife to prepare for your deposition today.

A. Not that I can specifically say, sorry.

Q. Okay. Do you remember how long you and your wife talked about the deposition?

A. Oh, just recently. Yeah. I mean, I don't know.

Q. I mean, how long was the conversation, if you recall?

A. Oh, real short. Yeah.

Q. Okay. Other than your wife, did you speak to anyone else --

A. No.

Q. -- to prepare for your deposition?

A. No.

Q. Okay. Did you review any documents to prepare for your deposition?

A. Documents? No.

Q. Did you review any e-mails to prepare for your deposition?

A. Notes about what had happened or what was done, yeah.

Q. And whose notes were those?

A. Where they came from, I'm not sure. But Drina gave them for -- to me, and about what was planned with me and my mom being sick, going after...

Q. And what do you mean by "what was planned"?

A. Let me think about it for a minute.

Q. Sure.

A. I don't know that I can clearly say, but --

Q. Okay.

A. -- what my sisters did to get the inheritance and leave me out of it. That was a change to the trust where I was left out of it or essentially left out of it.

Q. Okay. And which sister are you talking about?

A. Well, all three of the four of them. Not the adopted one, but the -- Anita, Amy, and Carol.

Q. Okay. And these notes that you saw, were they handwritten notes?

A. No.

Q. Were they typed out?

A. Yep. Yep.

Q. And were they notes between the sisters?

A. No.

Q. Do you know who -- who wrote the notes or typed the notes?

A. Bobbie, from what she understood from what had happened, yeah.

MS. BAYLESS: He's talking about the pleadings.

A. Yeah. I'm sorry. Yeah.

Q. (BY MS. FOLEY) Any other documents you reviewed to prepare for your deposition, other than the notes we just talked about?

A. No.

Q. And so who exactly filed this lawsuit?

A. Drina. You mean filed our version of it?

Q. This lawsuit, yes, sir.

A. Yeah, yeah. Drina, my wife, yeah.

Q. Okay.

A. But I signed -- I mean, she -- you know, I had to understand it and sign it more, yeah.

Q. Okay. Are you the executor of Ms. Brunsting's estate?

A. I was, but I don't -- I don't think I am now, so...

Q. But you're what now?

A. I was, but I'm not now. I don't think so.

Q. You're not the executor anymore?

A. No, I don't believe so. I don't know.

Q. Do you know who is?

A. No.
Q. I'm sorry, the answer.
A. No, I don't.
Q. Currently, do you have any responsibilities with respect to your mother's estate?
A. (Shook head.)
Q. And I'm sorry, that's a --
A. No, no, no.
Q. And -- and currently do you know who, if anyone, has any responsibility as an executor or representative of your -- your mother's estate?
A. I think it -- no, I can't specifically say.
Q. Okay. Are you the independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting?
A. Was at one point, yeah, but not --
Q. Okay. But you're not anymore?
A. No. No.
MS. FOLEY: Let's go off the record a second.
THE VIDEOGRAPHER: Off the record, 10:32.
(Break from 10:32 a.m. to 10:33 a.m.)
THE VIDEOGRAPHER: On the record, 10:33.
Q. (BY MS. FOLEY) You mentioned earlier you have kind of started to remember things, and you're designing?

A. Um-hmm.
Q. Are you currently working right now?
A. No, no. Just kind of going through college or my first job of learning things again, yeah.
Q. Okay.
A. An architect, I'm doing a -- a little project on a -- on a house where I can do wall sections and details and --
Q. Um-hmm.
A. -- dimensions and -- anyway, yeah.
Q. Okay. Are you working with a therapist?
A. No, no. Just what I'm doing at home, yeah.
Q. Got you.
In the lawsuit -- in this current lawsuit, you have not sued your sisters, correct; they're not involved in this lawsuit?
A. I don't know specifically about the lawsuit. They're responsible for what's happening to me in a bad way, but I don't know.
Q. Okay. Well, let me ask it this way: Have you taken any steps to -- have you -- have you filed suit against your sisters?
A. Yes.
Q. Okay.
A. Yeah.

Q. And that's another lawsuit, correct?
A. Yeah.
Q. They're not in this one, correct?
A. Um-hmm. I think it's -- I think it's two separate ones, yeah.
Q. Okay.
A. The lawyer against the sisters, but I'm not sure.
Q. Okay. And why did you file that lawsuit against your sisters?
A. Because of what they did to try to get inheritance with me being sick, yeah.
Q. Okay.
A. Being nearly dead, yeah.
Q. Got you.
And what evidence do you have that your sisters did that?
A. Cut -- tried to cut me out of the inheritance, yeah.
Q. And what evidence do you have that your sisters tried to cut you out of your inheritance?
A. I can't say.
Q. What -- what do you mean by you can't say?
A. (Pauses.)
Q. Are you -- are you aware of any evidence

that's out there?

A. It would be over by now, if we'd -- if it had been not messed up by them, yeah. My mom died a few years ago, and hadn't been resolved because of what they've blocked with trying to keep me and my adopted sister out of it. Yeah.

Q. Okay. And you mentioned earlier that the -- they tried to cut you out of your inheritance. What exactly do you mean by that?

A. They tried to have it -- I don't know. They tried to cut me out of it. Tried to not get me -- let me get any money from the inheritance.

Q. Okay.

A. They were unhappy that I was alive, yeah.

Q. They were unhappy that you were alive; is that what you said?

A. Yes, yeah.

Q. Okay. You think they wanted you to die?

A. Yes.

Q. And why do you think that?

A. Because they -- last time I saw -- seen any of them, they were unhappy to see me being alive, and, you know, getting back.

Q. And when was the last time you saw them?

A. I don't know. I'd say three years ago might

have been -- I don't remember.

Q. Okay. Did you ever confront or talk to any of them about this?

A. Not specifically, no.

Q. Why not?

A. Well, the last time I remember being with any of them, they were -- my sister, Anita, lives down in Victoria, came all the way here to see me, see my sister Carol take me to see my mom. And Anita came in to kind of see what was going on. And -- and mom was sitting in this recliner about to die and couldn't even talk. And Anita came in from Victoria to see what was going on while Carol took me over there. And it was like a big thing for them to perform and see where I was, yeah.

Q. Okay. And -- and you didn't talk to any of them at that time about --

A. Well, I --

Q. -- the way you felt?

A. Going over I talked to Carol a little bit. She took me over -- she lived here in Houston, and took me over there for this performance to -- you know, to show that they were handling things so I could see my nearly dead mom. Anita came all the way from Victoria just to understand things. And she didn't talk the

whole time. And then, you know, Carol took me home. And I didn't talk to her the rest of the way, because she had acted so -- I saw what they were doing, performing this thing to -- yeah, let me see Mom and say that they were handling things. But Anita coming all the way from Victoria just to understand it, rather than... you know.

Q. Okay. So -- and as you said, they were trying to cut you out of your inheritance. Did they actually do that?

A. I don't think they -- they haven't, no.

Q. Okay. So you have not been cut out of your inheritance?

A. Not yet, no.

Q. Do you -- do you expect that that's going to happen?

A. No. Two things: The facts and the fact that the -- the family owns the farm in Iowa, which is -- they couldn't get -- they couldn't sell it. Split it up like they did socks -- stocks that they went into and took hundreds of thousands of dollars, yeah.

Q. Okay. And which stocks are you referring to?

A. Oh, I think Exxon. I'm not sure, yeah.

Q. Do you know what percentage of the estate you are supposed to inherit under the current will?

A. Well, it should have been one fifth, equally. But they've done so much -- I don't know.

Q. Has -- has there been any distribution of any part of the estate?

A. Yes.

Q. Okay. So you have received some?

A. No, I haven't received anything, no.

Q. Okay.

A. It's -- yeah.

Q. What distributions are you aware of?

A. Stocks from the -- the -- Amy, Anita, and Carol have split up, yeah.

Q. Okay. Do you know when your mother hired Ms. Freed and her law firm for services?

A. Hmm-um. (Shook head.)

Q. And I'm sorry, is that a "no"?

A. No.

Q. Okay. And so then you also then don't know how she came to find them, correct?

A. No. No, I don't.

Q. Okay. And as -- I believe you said earlier you've never been to any meetings with Ms. Freed or her law firm with your mother, correct?

A. No.

Q. Okay. You've never attended any meetings

where your mother signed off on any documents, correct?
A. No. No.
Q. Okay. "No," you have not, correct?
A. That's right.
Q. You've also never been present for any conversations that your mother had with Ms. Freed about any of the documents she was signing, correct?
A. No, I haven't.
Q. Do you -- do you ever recall your mother calling you for any input with respect to any of the documents she was signing?
A. No.
Q. And that would be documents that were prepared by her lawyers?
A. (Shook head.)
Q. Were you in --
A. Yes, yes, I mean --
Q. I mean -- that was -- I messed up that question, that's why I'm --
A. Yes, no, I -- yes, I think so.
Q. Okay. So just so I can clean it up, you were -- you were not present for any -- hang on a second -- let me see what I'm saying now.
Okay. You don't recall your mother ever calling you for any input with respect to any documents

that she was signing prepared by Ms. Freed or her firm?
A. No, I don't.
MS. BAYLESS: Can you -- I'm just going to object to form. Can you narrow it down to time frame?
MS. FOLEY: Okay.
MS. BAYLESS: I mean, we're talking about different documents at different times.
MS. FOLEY: Sure. Well, I think he's already said that from the time -- that he's never had any conversations.
MS. BAYLESS: Well, if you'll just put your question that way, then. I'm just saying --
MS. FOLEY: Um-hmm.
MS. BAYLESS: Are we talking about for all time, or are we talking about these documents after he was ill? I'm just trying to --
MS. FOLEY: Okay. Sure.
MS. BAYLESS: I don't understand your question.
MS. FOLEY: Sure.
Q. (BY MS. FOLEY) Before you were ill, you'd never been present for any meetings or conversations your mother may have had with her attorneys at Vacek & Freed, correct?

A. Not that I remember, yeah.
Q. Okay. And since you've been ill, after your illness, you also never were present for any meetings or conversations your mother had with the attorneys at Vacek & Freed?
A. No, no.
Q. Before you were sick, you -- your mother never called you to get your input or to talk to you about any services she was receiving from Vacek & Freed?
A. Not that I remember, no.
Q. And since you were sick, your mother never called you to confer with you --
A. No.
Q. -- about any conversations she may have had with Ms. Freed or any other attorneys at her law firm?
A. No.
Q. Okay. You understand that part of this lawsuit concerns the Brunsting Family Living Trust?
A. Um-hmm.
Q. You understand that?
A. Yes.
Q. Okay. And do you know what that is?
A. What the family owns, as far as, yeah, stocks and the farm value, yeah.
Q. Okay. Do you know who told her to -- who told

your -- your parents to create such a trust?
A. No.
Q. Do you know who advised them to create such a trust?
A. Um-hmm.
Q. I'm sorry. Is that --
A. No, I don't.
Q. Okay. And do you know when it was created?
A. (Shook head.)
Oh, I would say 2009. I'm not sure if that's right or not.
Q. Okay.
A. Something close to that, yeah.
Q. One of the claims that you've made in this in this positi- -- in this -- in this lawsuit is that Ms. Brunsting, your mother, was misled about some of the documents she was signing.
A. Um-hmm.
Q. Do you -- do you understand that to be the case?
A. Yes.
Q. Okay. What documents do you believe your mother was misled to sign?
A. I don't know.
Q. Okay. And what makes you believe your mother

was misled into signing those documents?
A. I can't say specifically.
Q. Okay. Do you have any evidence that Ms. Freed or the law firm misled Ms. Brunsting into signing documents?
A. Yes, I do. They faked her signature or something like that, yeah.
Q. Okay.
A. I don't know if that's right, but yeah.
THE REPORTER: That's what?
THE WITNESS: I don't know if that's right or not, but yeah.
Q. (BY MS. FOLEY) Okay. So -- so you're not sure about that, correct?
A. Yeah.
Q. So then you don't have any evidence that anybody at the law firm faked Ms. Brunsting's signature, correct?
A. Let me think about that a minute.
Q. Sure.
A. Not that I can say, no.
Q. Okay. You al- -- one of the claims you also make in this lawsuit is that Ms. Brunsting was unduly influenced to sign certain documents. Do you understand that to be one of your claims?

A. Yes, uh-huh.
Q. Okay. What evidence do you have that the law firm or Ms. Freed unduly influenced Mrs. Brunsting?
A. I can't specifically say. Sorry.
Q. Okay. Have you ever seen any evidence to that effect?
A. I think they faked her signature, but I'm not really sure, yeah, if that's...
Q. And are you saying that because that's what somebody told you?
A. No, that's what I'm looking at. I look at Mom's signature, and it wasn't like she normally would write things. It's like somebody signed it. But I'm not sure if that's right now.
Q. Okay. Did your mother ever tell you that somebody faked her signature?
A. No. No, uh-uh.
Q. So that's just your --
A. Yeah.
Q. -- your belief?
A. Yes.
Q. Okay. She -- with respect to your -- your claim that she was misled and she was unduly influenced --
A. Um-hmm.

Q. -- you -- you agree with me that you weren't present during the time that she signed any of these documents, correct?

A. Right.

Q. Okay. So then you have no evidence whatsoever that that in fact occurred, correct?

A. No evidence, yes. I mean...

Q. Another claim that you're making in this lawsuit is that Miss -- Mrs. Brunsting did not have the capacity -- um-hmm -- to sign certain trust documents and power of attorney. What evidence do you have that Ms. Brunsting did not have capacity?

A. She was sitting in a chair and could hardly move. She had somebody taking care of her, yeah.

Q. Okay.

A. I mean, she was almost -- yeah.

Q. Okay.

A. Could have been in a nursing home, but she was taken at home with somebody who cared for her every day, fed her and moved her from her chair to her bed and -- yeah.

Q. And what time frame are you talking about?

A. I don't know. Five years ago or -- yeah. I don't know. Mom died a few years ago, but -- yeah.

Q. And so that's just based on your observation,

correct?

A. What's that?

Q. That's based on what you observed, correct?

A. Yes.

Q. Okay. No doctor's ever told you that your mother was incapacitated at that time, correct?

A. No, no. It's obvious that she was, but -- yeah.

Q. Okay. But no doctor ever told you that your mother --

A. Not that I remember, no, uh-uh.

Q. -- was incapacitated?

A. No.

Q. And let me -- let me finish my questions, because we're --

A. Sure.

Q. -- kind of talking over each other. And I'll --

A. Sure.

Q. I'll try to let you finish your answer.

But just so we've got it clean, no doctor ever told you your mother was incapacitated in the 2009 time frame, correct?

A. Not that I remember, no.

Q. Okay. In fact, at that time, your mother was

still living at her house, correct?

A. Yes, uh-huh.

Q. Okay.

A. Being cared for, though, yeah.

Q. Right. But she was living at her house?

A. Yeah, yeah.

Q. She was -- you -- you were -- you would be able to come over and speak to her, correct?

A. She couldn't talk, but, yeah.

Q. She couldn't talk?

A. No. Not that I remember, huh-uh.

Q. Okay. So your memory is that she couldn't talk at all?

A. No. That's right, yeah. At least the last few times I saw her, yeah.

Q. Okay. When was the last few times you saw her?

A. I don't know, three, four years ago, yeah.

Q. Okay. What about in the 2009 time frame before you fell ill; she was able to talk then, correct?

A. Oh, yeah, yeah.

Q. Okay. And then in 2010 after you -- after you became ill, she was able to talk at that time, correct?

A. Not that I remember right now.

Q. Okay. Other than what -- other than your view of your mother, what other evidence do you have that she was incapacitated from 2009 until the time she passed away?

A. Evidence that I have that she was incapacitated? Just not... you know, going over there and seeing that she was in the same chair the whole time and couldn't walk around, had somebody taking care of her, yeah.

Q. Okay. And what do you mean by "in the" -- "in the same chair the whole time"?

A. Oh, one of those big easy chairs, yeah. And somebody had to get her up and move her into the bed and kind of take care of her like.

Q. Okay. But you'll agree with me that just because someone can't move around as well as they --

A. Um-hmm --

Q. -- could in the past, that doesn't mean that they're mentally incapacitated, correct?

A. Well, not -- no, uh-uh, not completely. I don't know.

Q. In -- in 2009, would you -- do you know if your mother was seeing any doctors?

A. I don't know.

Q. Okay.

A. Because that was about the time that I was getting ill, so, yeah.

Q. Okay. What about in 2010, do you know if your mother was seeing any physicians at that time?

A. I don't know.

Q. What about 2011?

A. I don't know, yeah.

Q. And what about 2012?

A. I think she was, but I don't know what -- I don't have any memory about that time, yeah --

Q. Okay.

A. -- about what happened.

Q. Okay. Eventually, Anita Brunsting, your sister --

A. Um-hmm.

Q. -- became the trustee for the family trust.

A. (Nodded head.)

Q. Do you understand that to be the case?

A. Yes, yes.

Q. Okay. And in order to do that, there was a -- a document that was executed that stated such, correct?

A. Yes.

Q. And that document was executed by your mother, correct?

A. I don't know how that was done, but, yes.

Q. Okay. And the reason you don't know is because you weren't there, correct?

A. Yeah, uh-huh.

Q. And you don't know what was explained to your mother at the time --

A. No.

Q. -- that she signed it?

A. No. No.

Q. You don't know what discussions she may have had with her attorneys about it, correct?

A. No, no.

Q. And -- and you don't know -- you don't have any information as to why that was done, meaning that Anita became the trustee, correct?

A. To go after the inheritance, yeah.

Q. Okay.

A. Because Dad was dead, and Mom was sick, and they -- and they had the value of the farm and the stocks.

Q. Okay.

A. And I was sick, so they were trying to get me out of the inheritance, yeah.

Q. And why do you believe that?

A. Because of where we are right now, being a legal problem because they tried to get me out of --

they were unhappy that I was surviving, yeah.
Q. Okay.
A. I'm sorry. I don't know a good way to put that, but...
Q. Do you know whether or not Ms. Brunsting actually requested that that happen, that Anita become the trustee?
A. Not that I know of. I don't know.
Q. Okay. Do you agree that it's possible that she in fact did want Anita to be the trustee?
A. No.
Q. Why not?
A. I don't know. I think Mom could have been talked into it instead of -- because saying, "Oh, Carl's about dead, and you've got to change this thing." I don't know.
Q. Um-hmm. Do you know if that actually happened?
A. I don't know. Not specifically, no.
Q. You understand that Anita was also named as the power of attorney named to have power of attorney over your mother, correct?
A. Um-hmm, um-hmm.
Q. Okay. And that was also in a document that was -- that was done that was made possible because

your mother signed off on a document; you understand that?

A. Somewhat, yes.

Q. Okay.

A. Anita, Amy, and Carol, yeah -- or Anita and Amy, yeah.

Q. Okay. And again, you weren't present when that document was signed, correct?

A. No, no, no.

Q. And you don't know what discussions were had between your mother and her attorney about that document, correct?

A. No, no.

Q. You don't know if your mother specifically requested that document?

A. No, I don't.

Q. Do you -- is Anita and Amy, are they still the trustees?

A. As far as I know, yes, uh-huh.

Q. Okay. You're aware that Carol was named Nelva's healthcare power of attorney, correct?

A. Not specifically. I don't remember that, no.

Q. Okay.

A. I think you're right, but...

Q. All right. And of course if that occurred,

you understand that your mother would have signed off on a document to that effect, correct?
A. I don't know.
Q. Okay. You don't have any information about any healthcare power of attorney your mother may have signed, correct?
A. (Shook head.)
Q. I'm sorry. Is that a "no"?
A. No, I don't, yeah.
Q. Okay. Do you know whether or not Carol was assisting your mother in going to the doctor?
A. Not that I'm aware of, no.
Q. Okay. Specifically in between 2009 until the time of her death, do you know whether or not Carol assisted your mother in going to the doctor?
A. I don't know, no.
Q. Do you know whether or not any of your sisters were responsible for paying for your -- helping your mom pay for her medical bills?
A. I don't know.
Q. And do you know what, if any, involvement Ms. Freed may have had in assisting your mom with having money so that she can pay her medical bills?
A. No, I don't.
Q. What is -- when's the last time you talked to

Candace Curtis?
A. I don't remember.
Q. Okay. I'm talking about your sister.
A. Oh, Can- -- oh, a couple of years ago, yeah, she came in town for -- and yeah. Candy, I'm sorry, yeah.
Q. Okay. So you call her Candy?
A. Yeah, yeah.
Q. Okay. What about Carol, when's the last time you talked to Carol?
A. When she took me over to Mom's about -- just before Mom had -- Mom died, yeah.
Q. And then I believe you said earlier you haven't spoken to Amy or Anita in several years.
A. No, no.
Q. Okay.
MS. FOLEY: Let's take a -- take a short break real quick.
THE VIDEOGRAPHER: Off the record, 10:57.
(Break from 10:57 a.m. to 11:02 a.m.)
THE VIDEOGRAPHER: On the record, 11:02, Tape 2.
Q. (BY MS. FOLEY) Hello, Mr. Brunsting. We're back on the record here. We just took a short break, and I saw you looking at some handwritten notes on the

break. Are those your notes?
A. Yeah.
Q. Can I take a look at them?
A. Sure. I didn't write any down. I just brought a -- thought about writing something and didn't, so...
Q. Um-hmm. And these are just notes that you've taken about --
A. I do every day, yeah.
Q. Like a journal?
A. Yeah.
Q. Okay.
MS. FOLEY: We can take a break later.
MS. BAYLESS: I haven't even seen them. I don't even know what we're talking about.
MS. FOLEY: Okay. Let's take a break now, then.
THE VIDEOGRAPHER: Off the record, 11:03.
(Break from 11:03 a.m. to 11:04 a.m.)
THE VIDEOGRAPHER: On the record, 11:04.
Q. (BY MS. FOLEY) Mr. Brunsting, we were just talking about a journal that you keep, correct?
A. Yep.
Q. And is that a daily journal you keep?
A. Yeah, yeah.

Q. Why do you keep it?
A. Just so I know what I've done, and where we went. You know, we did our school walk and -- and what I'm working on, and what I've read recently. I mean, like, pick up -- an architectural record has these notes in it where you've got to get -- be AIA or American Institute or -- or -- and so I read, and I make a little note about it and yeah.
Q. Okay.
A. Just what I've done every day, yeah, a diary.
Q. And when -- were you reviewing any part of it on the break?
A. Just --
Q. Were you --
A. No, I was going to, but I didn't.
Q. Okay. Did you -- do you write information in your journal about this case?
A. No. Not specifically, no. It's just what I do every day. And what -- what me getting back is about -- about, yeah.
Q. Okay. How long have you been keeping the journal?
A. Oh, I don't know. Four years, I mean, something -- since I'm coming back from -- yeah.
Q. Okay. Do you write about your sisters in your

journal?
A. No. Um-hmm.
Q. Okay.
A. Just what happens every day, and what I've -- what we've done. Yeah.
Q. Um-hmm.
A. Like I look at the clock, and I see -- okay, we just did our walk, and I -- I'm working on -- I'm reading an AIA thing. And, you know, what I'm doing every day, a diary.
Q. And do you use it to refresh your -- your memory sometimes?
A. Just to -- not only refresh -- sometimes I do read it, but, yeah, usually it's just to kind of record just what's happened, yeah.
Q. Okay. And are you doing that at a direction of a doctor or --
A. No, no, uh-uh.
Q. Okay. Do you recall if -- well, strike that.
Do you believe that there's any document that Candace Freed or her law firm drafted that cut you out of your inheritance?
A. Not that I know of, no.
Q. Okay. Do you recall whether or not your mother gave you any gifts, financial gifts, in your

lifetime?
A. Not that I can remember, no.
Q. Okay. Do you know if she gave gifts to any of your other siblings?
A. I don't know.
Q. Okay. What about to any of her grandchildren?
A. No.
Q. What about to your wife, do you know if your mother ever gave financial gifts to your wife?
A. No.
Q. One of the things you've also claimed in your lawsuit is that -- that my clients helped to implement a scheme to change the terms of the family trust.
A. Uh-huh.
Q. What scheme are -- are you referring to?
A. To get me out of it, and -- me and my adopted sister, Candy, out of it. Yeah.
Q. Okay. And what evidence do you have that my clients, Ms. Brunsting's lawyer and law firm, were involved in that scheme?
A. I don't know. I can't specifically say.
Q. Okay. Have you seen any such evidence?
A. Yes.
Q. What evidence have you seen?
A. I can't say. Sorry.

Q. Okay. What can you tell me about the scheme?
A. That I got sick and my sisters decided how to go in and get the inheritance in a way that left me out of it.
Q. Okay.
A. And -- yeah.
Q. And you -- as we sit here today, you don't have any evidence that my clients -- that that was their point, too, was to cut you out of your inheritance, do you?
A. Yes, I do. I just can't get specific about what that is, yes.
Q. Okay. Well, can you speak generally about -- about what that is?
A. I was sick, and my mom was sick, and they took advantage, and tried to get me out of the inheritance, and that's why we're in this problem right now, of it not being split five ways.
Q. Okay. And is that mainly based on what your -- based on what you believe your sisters' goals were?
A. Yes.
Q. Okay. That's not based on anything that you've heard my clients say, correct?
A. Your clients are?

Q. Ms. Freed and her law firm, Ms. Brunsting's lawyers.

A. (Shook head.)

Q. I'm sorry. Is that a -- is that a "no"?

A. When you say "Ms. Brunsting's," who do you mean?

Q. Ms. Nelva Brunsting.

A. I don't know.

Q. Okay. Another thing you claim is that my clients, the lawyer and the law firm, improperly removed assets from Elmer and Nelva's estates from the family trust. What evidence do you have that my clients did that, meaning the lawyer or the law firm?

A. That they helped it happen. I'm not sure -- yeah.

Q. Okay. Do you know if they helped it happen?

A. Well, where we are right now, trying to get this resolved in a good way, and...

Q. Well, I understand that. But do you know if my client helped that happen?

A. Not that I can specifically say, no.

Q. But can you tell me what assets you believe were improperly removed from the trust?

A. My access to the inheritance of the value of the farm and stocks.

Q. And when you say your access, what do you mean by that?

A. That we couldn't get this solved in a good way where it was five -- it was split five ways.

Q. And you're -- and when you say "it was" -- "it was split five ways," are you talking about all assets or a specific asset?

A. Stocks, and the farm value is -- farm value is more than the stocks were, and -- are -- and -- yeah.

Q. Okay.

A. Mom died, and it should have been split five ways, but they put up -- tried to get me out of it, so...

Q. Okay. But again, they have not been successful at this point, correct?

A. No. No. They partially are. They both -- the three of them got a bunch of inheritance out -- or I mean stock money out, so...

Q. Okay. And you don't have any evidence that my client had anything to do with that, do you?

A. Your client is who?

Q. The -- Miss -- Ms. Freed and her law firm.

A. I -- I don't know. Sorry.

Q. I'm sorry. I didn't...

A. I don't know.

Q. Okay. One of the things that you've alleged in your petiti- -- your petition is that -- that there were changes made to the trust documents that Nelva Brunsting did not want made; do you recall that allegation?
A. Yeah, that -- that -- not specifically, no.
Q. Okay. Do you believe that there were changes made to the trust documents that Ms. Nelva Brunsting did not want made?
A. Yeah. Yes. I think she was talked into trying to get me out of the inheritance.
Q. Okay. What changes do you -- are you talking about?
A. Nothing. I can't give you specifically, so...
Q. Okay. And -- and with respect to what you said earlier, which is just your -- your sisters trying to cut you out of the inheritance, again, you don't have any evidence that Ms. Freed or -- or the law firm was -- had a -- had an intent or a goal to cut you out of your inheritance, do you?
A. Not any evidence, but I think that's what happened, is they were trying to help what my sisters were trying to do, which was keep me out of the inheritance.
Q. Okay. You weren't -- you weren't privy to any

conversations Ms. Nelva Brunsting and her lawyers may have had regarding changes to those documents, correct?

A. No.

Q. So you don't know if she actually requested those changes?

A. No, uh-uh.

Q. Another allegation you've made in your --

A. Um-hmm.

Q. -- by filing this lawsuit is that Ms. Nelva Brunsting's lawyers and her law firm, Candace Freed and Vacek & Freed, took steps to undermine Ms. Nelva Brunsting's control of her assets.

A. Um-hmm.

Q. Do you understand that allegation?

A. Yes, yeah.

Q. Okay. And what evidence do you have that Ms. Freed and her law firm took steps to undermine Ms. Nelva Brunsting's control of her assets?

A. Where we are right now without it being solved, because they're trying to keep me out of it.

Q. Okay. And I understand where we are right now. But what evidence do you have that my clients, Ms. Freed and her law firm, has done anything like that?

A. I don't know.

Q. Another thing you've claimed is that my clients Miss -- Ms. Freed and her law firm has -- has placed certain assets at risk of loss.

A. Certain assets -- assets?

Q. Yes. Um-hmm. Do you recall the allegation?

A. Yes, they tried to keep me out of it. But I don't know how to specifically say what -- what they did or how it was done, yeah.

Q. Okay. And with respect to the -- the assets that -- that you've pled were at risk of loss, do you -- which assets are you referring to?

A. Well, both stocks and the farm value, because like I said, the farm value's probably two-and-a-half million and the stocks were a million. And they've gone into and gotten a bunch of the stocks, but they couldn't sell the farm, so...

Q. Okay. And it's -- and what -- who is -- who do you understand to have done that?

A. Anita and Amy -- Anita, apparently, yeah.

Q. Okay. And you don't have any evidence that -- that my client had anything to do with transferring stocks, correct?

A. Your client is who?

Q. Ms. Freed and her law firm.

A. That she helped them get me out or trying to

get me out of it? I'm sorry. Yeah.
Q. Okay. Specifically, though, what evidence do you have that Ms. Freed and her law firm had anything to do with transferring stock?
A. I can't say.
Q. Okay. And does that mean you don't know, or you --
A. Yeah. I can't -- like I said, I can't say. I don't know.
Q. Another thing you've alleged -- alleged in this case is that Ms. Nelva Brunsting did not understand the documents that were prepared for her --
A. Um-hmm.
Q. -- by Ms. Freed and her -- and her lawyers at Vacek & Freed.
A. Um-hmm.
Q. Did you understand that allegation?
A. Yes, yeah.
Q. Okay.
A. I think Mom was talked into things, and -- because she was old and sick, yeah.
Q. Okay. What evidence do you have that Ms. Brunsting was talked into things by either Ms. Freed or Vacek & Freed?
A. I don't know.

Q. Okay. And again, whenever any such documents were presented to your mother or discussed with your mother by her attorneys, you weren't present for that, correct?

A. No. No, uh-uh.

Q. Another thing you've alleged in this lawsuit is that Ms. Freed and Vacek & Freed, the law firm, failed to address Ms. Nelva Brunsting's lack of capacity.

A. Yes.

Q. Do you understand that allegation?

A. Yeah.

Q. Okay.

A. Mom and me, yeah.

Q. Okay.

A. Kept me out of it.

Q. And -- and what -- what do you mean by kept you out of it?

A. That it was just done without notifying me or my mom about what was happening, yeah.

Q. Okay. And how do you know your mother wasn't notified?

A. I don't know.

Q. Okay. And you -- you said you also were not notified.

A. Yeah.
Q. And -- and what do you think that somebody failed to notify you of?
A. What -- what they were planning to do. I don't know, yeah.
Q. Okay. And specifically with respect to what you've alleged in this suit, which is that Vacek & Freed and -- and Candace Freed failed to address Ms. Nelva Brunsting's lack of capacity --
A. Um-hmm.
Q. -- do you know when and if that ever came up?
A. Not specifically, no.
Q. Okay. Do you know what, if anything, was done by Ms. Freed to address it?
A. No.
Q. Do you know if Ms. Freed had any conversations with your sisters about Ms. Nelva Brunsting's capacity?
A. Not that I can say, no.
Q. Okay. And so then if there was any attempt made by Ms. Freed or her law firm to address Ms. Nelva Brunsting's capacity, you would not have any information whatsoever about that, correct?
A. Not specific -- no, no.
Q. And forgive me for the pause. I'm just trying to make sure I don't go over something I've already

been over.

A. Uh-huh.

Q. One of the allegations that you've made in the case is that -- excuse me -- Ms. Freed and her law firm failed to advise Elmer and Nelva of the terms of the family trust and the proper administration --

A. Um-hmm.

Q. -- of the family trust.

A. Um-hmm.

Q. What evidence, if any, do you have that they failed to provide such advice?

A. What we're in right now, we're trying to get it resolved in a good way, five -- split five ways. Instead of all this problem. I don't know.

Q. Okay.

A. I don't know how to say specifically.

Q. Okay. So you're saying that because there's a dispute amongst you and your -- your sisters --

A. Yes.

Q. -- that's -- that's why you believe that --

A. Yeah, she was --

Q. -- your parents weren't provided proper advice?

A. Yeah.

Q. Okay. Anything other than that?

A. Not that I can remember. Sorry.
Q. Another claim that you've made in this lawsuit is that Ms. Freed and her law firm failed to protect Nelva's rights with respect to the family trust.
A. Um-hmm.
Q. What do you mean by that exactly?
A. That she -- they -- she helped get it resolved where I was going to be kept out of it and -- yeah.
Q. Okay. How so?
A. I can't say specifically. I don't know.
Q. Okay. What specific rights do you mean when you say that Ms. Nelva Brunsting's rights were not protected by Ms. Freed and her law firm?
A. Where we are right now, instead of having resolved in a good way, yeah.
Q. Okay. So again, you're saying because you and your sisters are having a dispute about the trust --
A. Yeah.
Q. -- and the assets --
A. Yeah.
Q. -- that that's why you believe that Ms. Nelva Brunsting's rights aren't -- weren't protected?
A. That's right. It should have been split five ways, and then it would be -- would be over by now, yeah.

Q. Okay. And what you basing that on?
A. Pardon?
Q. What are you basing that on, that it should have been split five ways?
A. Well, there are five kids.
Q. Okay.
A. And the value of the farm and stocks, and that should have been after Mom died, all split, yeah.
Q. Okay. And is that based on something your mom told you or --
A. No, it's just what it should be with five kids and --
Q. Okay.
A. Mom and Dad are dead, and inheritance, yeah.
Q. But you understand that your parents could have changed their mind about how they want to distribute property after their death, correct?
A. I guess they could have, but I don't think they did, yeah.
Q. Okay. Another allegation you've made in this case is that Ms. Freed and her firm failed to advise Nelva Brunsting that Ms. Freed and her firm were also representing the trustees --
A. Yes.
Q. -- Amy and Anita; is that correct?

A. Yes.
Q. Okay. And how do you know that?
A. What happened without mom knowing it, I don't know.
Q. How do you know -- how do you know your mother did not know?
A. She was old and sick, and the -- it changed from being split five ways to being this problem right now, yeah.
Q. Okay. But again, you were never present for any discussions your mom may have had --
A. No, no.
Q. -- with Ms. Freed --
A. No.
Q. -- or her law firm about that, correct?
A. No, no. Yeah.
Q. Okay. And so you agree then it's possible that Ms. Freed and her law firm did in fact tell Nelva -- Nelva Brunsting about the fact that she was representing the trustees as well as Ms. Brunsting?
A. I don't know.
Q. Okay. And so -- but so what you're saying is you can't say one way or the other, because you weren't there, correct?
A. Yeah. Yes.

Q. What -- another allegation you have in your lawsuit is that Ms. Freed and her law firm failed to take steps to inform Nelva Brunsting of the objectives of the current trustees.

A. Um-hmm.

Q. What objectives are you referring to?

A. Having it done five ways, and after Mom died, it had -- I don't know what to say.

Q. Okay.

A. And where we are right now.

Q. Got you.

And I guess, do you have any evidence that -- that Miss -- Ms. Freed or her law firm intended to do anything, other than comply with what Ms. Nelva Brunsting and Mr. Elmer Brunsting wanted?

A. Where we are right now, and that it's taking so long to get through this, yeah.

Q. Okay. So again, the -- the fact of the dispute --

A. Yeah, the dispute.

Q. -- is your evidence?

A. Yes, uh-huh.

Q. Okay.

MS. FOLEY: Did you ever dismiss the conversion claim? You said in some interrogatories

that you would, but it's still in the petition.

MS. BAYLESS: You know, I did.

MS. FOLEY: Okay.

MS. BAYLESS: But I think that it's referred to in one -- I think the word "conversion" didn't get taken out in one paragraph.

MS. FOLEY: Yeah. Okay. So -- but it is gone?

MS. BAYLESS: But it is; it's gone, yeah.

MS. FOLEY: All right.

MS. BAYLESS: Yeah. I saw that actually when I was looking at this.

MS. FOLEY: Okay.

MS. BAYLESS: I just need to take it out in the next amendment.

MS. FOLEY: Sure.

Q. (BY MS. FOLEY) Another allegation you've made in your suit is that my clients, Ms. Freed and her law firm, helped -- tried to help the trustees, meaning Amy and Anita, hide their improper actions.

A. Um-hmm.

Q. What evidence do you have of that?

A. Where we are right now, having to get through this instead of it being split up five ways.

Q. Okay. But other than that, do you have any

other evidence that -- that Ms. Freed or -- or her law firm tried to hide any actions by Amy or Anita?

A. Not specifically, no, no.

Q. Okay. Because it -- it sounds like you -- you believe that you are aware of what Amy and Anita were trying to do, correct?

A. Yes. Yeah.

Q. Okay. And you understand that my client, Ms. Freed and her law firm, have provided documents in this case?

A. Yes.

Q. Okay. Another claim that you've made in your lawsuit here is that there are documents that were not signed at Ms. Freed's law firm, but were made to appear that they were. Do you recall that allegation?

A. No, I don't.

Q. Okay.

A. Sorry.

Q. Do you believe that occurred?

A. Yes.

Q. Why?

A. Tell me that again.

Q. Sure. That you believe that there's -- there are documents that were not signed by your mother --

A. Yeah.

Q. -- in Ms. Freed's office that were made to look like they were signed in her office.

A. Yes. Yeah, yeah.

Q. Okay. Why do you believe that?

A. There's a signature from Mom that didn't look like hers at all, like it was --

Q. Okay.

A. -- mocked up. Yeah.

Q. Okay. Do you know what document that was?

A. No, uh-uh.

Q. Okay. And so I guess it's your belief that somebody else completely signed the document?

A. Yes, uh-huh.

Q. Okay. And other than your looking at the signature and coming to that conclusion, what other evidence do you have that makes you believe that that's not your mother's signature?

A. I don't know. It -- yeah, it doesn't look like Mom -- I don't know -- Mom's handwriting. Like somebody else faked it.

Q. That's what it looks like to you?

A. Yeah, uh-huh.

Q. Okay. Anything other than that that makes you believe that that particular document was not signed by your mother?

A. No.
Q. Other than the one document we're discussing, are there any other documents that you believe were not signed by your mother?
A. Not that I can remember, no.
Q. Okay. So but you recall one, correct?
A. Well, no, there were several that were that way, but -- yeah.
Q. Several documents?
A. Yeah. Uh-huh.
Q. Okay. I guess -- are you -- you're not alleging that Ms. Freed signed those documents, are you?
A. I don't know.
Q. You're not alleging that anybody at her law firm signed those documents, are you?
A. No.
THE REPORTER: What was your answer?
THE WITNESS: No.
Q. (BY MS. FOLEY) There's another allegation in your lawsuit where you claim that Nelva Brunsting had refused to sign a document that was prepared by the trustee -- at the request of the trustees --
A. Um-hmm.
Q. -- and by my client and her law firm.

A. Um-hmm.
Q. What document is that you're referring to?
A. Well, I have no -- I don't know. I don't know specifically.
Q. I'm sorry?
A. I don't know. I just remember seeing her signature didn't look like hers at all, so...
Q. Okay. Now -- now I'm talking about something that's a little bit different, though. There's another allegation in your lawsuit where you claim that Ms. Nelva Brunsting had refused to sign some documents --
A. Oh.
Q. -- that were prepared for her at the request of Amy and Anita.
A. Uh-huh.
Q. Do you recall that allegation?
A. Yes.
Q. What document are you referring to?
A. I don't know what specifically.
Q. Okay. What evidence do you have that Ms. Nelva Brunsting refused to sign any document that was prepared for her by Ms. Freed or her law firm?
A. Well, I think it's a fake signature, and how it's gone instead of being -- I don't know.

Q. Okay. Kind of like what we -- we discussed earlier?
A. No.
Q. Anything other than that?
A. Not that I can --
Q. Okay.
A. -- say. Sorry.
Q. Meaning, you weren't told by Nelva Brunsting that she refused to sign any documents --
A. Oh, no, no.
Q. -- correct?
A. No.
Q. Okay. And were you -- I guess, were you told by either Amy or Anita that Ms. Nelva Brunsting refused to sign any documents that they requested for her?
A. No.
Q. Okay. Another thing -- some other things that you complain about in your -- in your lawsuit is that there were improper expenses, improper trustees' fees, improper payments made to the trustees, Amy and Anita. Do you recall that allegation?
A. Yes.
Q. Okay. Do you have any evidence whatsoever that my client, Candace Freed and her law firm, had anything to do with that?

A. I don't know.

Q. Okay. Do you know what, if any, power or control Ms. Freed or her law firm may or may not have over, for instance, taking money out of the -- the trust assets and providing them to the trustees?

A. No, I don't.

Q. Okay. Do you know who is responsible for paying trustee fees?

A. Trustee fees?

Q. Yeah.

A. I don't know. I'd say Anita, but I'm not sure.

Q. Okay.

A. She's been the leader of the three of them.

Q. What do you mean by that?

A. I think she told Carol and Amy what to do to get this all done.

Q. Okay.

A. For me and Candy to not get anything, so...

Q. Okay.

A. Although, they kind of considered maybe Candy being involved.

THE REPORTER: Although they...

THE WITNESS: Considered Candy being involved with -- yeah.

Q. (BY MS. FOLEY) Okay. But either way, you don't have any evidence that my clients were involved in that at all?
A. Your clients are who?
Q. Ms. Freed and her law firm.
A. (Nonverbal response.)
Q. I'm sorry. Was that a --
A. No.
Q. Okay. One of the claims you have in this lawsuit is that my clients, Ms. Freed and her law firm, made misrepresentations to Nelva Brunsting and Elmer Brunsting.
A. Um-hmm.
Q. What specific misrepresentations do you believe Ms. Freed and Mister -- I'm sorry -- Ms. Freed and her law firm made to Nelva and Elmer Brunsting?
A. Specifically, I don't know. I just -- generally, it was to try to...
Q. Generally what?
A. It was to try to get it over without me being involved.
Q. Okay. But you don't have -- you don't -- you're not aware of any misrepresentations made by Ms. Freed or her law firm, correct?
A. No, not specifically, no.

Q. Okay. And -- okay.

In the -- in your lawsuit, you're -- you're claiming damages in this case --

A. Um-hmm.

Q. -- correct?

A. Yeah.

Q. What is your understanding of your damages that you've suffered as a result of this lawsuit?

A. What we're going through right now instead of it being divided five ways.

Q. Okay. Anything else?

A. Not specifically, no.

Q. You've also asked for attorney's fees in this case?

A. Yeah.

Q. Have you paid any -- your attorney any fees to date?

A. Yes.

Q. Okay. How much have you paid her, if you know.

A. A quarter of a million dollars.

Q. Okay. And the quarter of a million dollars that you've paid to your attorney, has that all been related to this lawsuit, or has it been related to other lawsuits as well?

A. I can't speak specifically, but about this inheritance stuff, yeah.
Q. Okay. And as I understand it right now, you have at least two lawsuits, correct?
A. Um-hmm.
Q. And one is against my client, Ms. Freed and her law firm, correct?
A. Um-hmm.
Q. I'm sorry. That's a "yes"?
A. Yes.
Q. And the other has to -- is -- is related to your sisters, correct?
A. Yes, yes.
Q. Okay. Do you know if the $250,000 that you've spent on attorney's fees is related to either suit or both?
A. Both of them, I think.
Q. Ok.
A. Yeah.
Q. Okay. Do you know how much of those fees are actually related to this lawsuit?
A. No, no, no.
Q. Okay. Have you ever heard of Rosewood Family Physicians?
A. The name sounds familiar, but I don't remember

why.

Q. Okay. What about Clarence F. Kendall, II?

A. Um-hmm.

Q. No. Do you know -- do you know that to be a doctor?

A. Yeah. Rosewood is that who was taking care of Mom.

Q. Okay.

A. Yeah.

Q. All right. What about Dr. Robert White, do you know who that is?

A. (Shook head.)

Q. What about Medical Chest Associates PA; is that somebody you may have seen?

A. I may have, but I'm not sure.

Q. Okay. Or your mom, maybe?

A. Could be. I don't know.

Q. Okay. What about G. Thomas Keith; do you know who that is?

A. (Shook head.)

Q. What about Dr. A.J. Jane?

A. (Shook head.)

Q. You don't know who that is?

A. (Shook head.)

Q. And could you --

A. No, I don't.
Q. Okay. What about Rudolph and Sri Kumala Shahendra?
A. No.
Q. Do you know who that is?
They live on Pinerock Lane.
A. Oh, really? Say the name again.
Q. Sure. I could barely pronounce it, but it's Rudolf and Srikumala Suhendra, which -- it's spelled S-R-I-K-U-M-A-L-A, and their last name is Suhendra.
A. Mom lives on Pinerock. I don't know why -- who those people are.
Q. Okay. Possibly neighbors --
A. Yeah.
Q. -- of your mom?
A. Uh-huh.
Q. But you don't know them?
A. No, no. I mean, it was 40 years ago when I lived there, and so I don't know --
Q. Okay.
A. -- who her neighbors were, yeah.
Q. What about Tio Vasquez, do you know who that is?
A. (Shook head.)
Q. Do you know if he was one of the caregivers

who took care of your mom?
A. I don't know. Oh, that sounds familiar, but I don't know, yeah.
Q. Okay. What about Robert Cantu?
A. I don't know.
Q. You don't know who he is?
A. Um-hmm.
Q. Do you know if he may have been one of the caregivers who took care of your mom?
A. I don't know. Yeah.
Q. Okay. Do you know who Stan McCormick is?
A. Um-hmm.
Q. I'm sorry. Is that a "no"?
A. No.
Q. Do you know who Judy Lennox is?
A. No.
Q. What about Charles Gerhart?
A. No.
Q. What about Charles -- Dr. Charles Kevorkian?
A. No.
Q. Is he not one of your medical providers, Dr. Kevorkian?
A. Not that I remember, no.
Q. Okay. You provided some responses to interrogatories in discovery in this case. One of the

statements you've made is that your mother would sometimes become disoriented.

A. Um-hmm.

Q. When would this happen?

A. At the end of her life, yeah.

THE REPORTER: Can you repeat your answer?

THE WITNESS: At the end of her life.

Q. (BY MS. FOLEY) Okay.

A. And she couldn't talk, and she kind of -- you could see her thinking about things, but couldn't talk, I guess.

Q. But you don't know how long that was going on?

A. No, I don't know. A year or two.

Q. Okay. And do you know if she was seeing a doctor for that?

A. Pardon?

Q. Do you know if she was seeing a doctor for that?

A. Oh, I'm sure she was.

Q. But you don't know?

A. No, not specifically.

Q. Do you know if your mom had any medical conditions, like specific diagnoses?

A. I couldn't say specifically, but she was

unable to move almost, and had to be cared for. Yeah.
Q. Okay.
A. But cared for at home. She had somebody to feed her and take her here and...
Q. Had she suffered any significant -- for instance, like a heart attack, or stroke, or anything like that?
A. Not that I know of.
Q. In some of your responses, you talk about a safe deposit box. Did your mom have a safe deposit box?
A. I don't remember. I'm -- I'm sure she did, though. Yes, yes.
Q. Okay.
A. I don't specifically remember. Sorry.
Q. Do you know what she kept in the safety deposit box?
A. No.
Q. Do you know if anything has been taken or removed from that safety deposit box?
A. I don't know.
Q. Did your mom have savings bonds?
A. (Nodded head.)
Q. Is that a "yes"?
A. No. I'll just say, yes, I think so. Yeah.

Q. Okay. Do you know what happened to those savings bonds?
A. No, uh-uh. In her -- the stock's in her -- and the farm value are what the inheritance was about, yeah --
Q. Okay.
A. -- or is about, yeah.
Q. Are you aware of a conference call that took place between your sisters and Ms. Freed and her law firm?
A. No.
Q. You don't know anything about that?
A. No.
Q. Another allegation that you may have made about the documents in this case is that you believe that there were some documents that were notarized by Ms. Freed and her law firm, even though Ms. Nelva Brunsting was not present when they were notarized --
A. Um-hmm.
Q. -- or did not sign when they were notarized.
A. Yes.
Q. Do you understand that allegation?
A. Yes.
Q. Okay. Do you know what documents you're talking about or what documents you saw?

A. Changing the inheritance. I don't know what they're called. Sorry.

Q. Okay. What about the document that made you believe that it was notarized at Ms. Freed's law firm but not signed by Ms. Brunsting at the law firm?

A. The fake signatures that was there, yeah.

Q. Okay.

A. And Mom wouldn't have wanted to do this. I don't know. Sorry.

Q. Okay. Anything else?

A. No.

Q. There's a statement in your discovery responses that says that the -- you believe that representations by Ms. Freed and her law firm were made in presentations at Elmer and Nelva Brunsting's church.

A. I don't specifically remember that. Sorry.

Q. Okay. So you're not aware of any speech or presentation Ms. Freed or her law firm may have done at your parents' church?

A. No, not that I know of, no.

Q. Okay. Which church did they go to?

A. A Methodist church, Chapelwood United -- Chapelwood Methodist.

Q. Did you go to that same church?

A. Yes, uh-huh.

Q. Another allegation -- well, I don't know.
MS. FOLEY: Are you still making allegations of criminal misconduct, Bobbie?
MS. BAYLESS: No.
MS. FOLEY: Okay.
MS. BAYLESS: Sorry, I didn't know you were talking to me.
MS. FOLEY: No, that's okay.
Q. (BY MS. FOLEY) There's an allegation that you have in your claims that your -- your sisters were making improper personal -- payments for personal expenses.
A. Um-hmm.
Q. Do you recall that allegation?
A. Yes.
Q. What kind of things were they spending money on that you claim are improper personal expenses?
A. I can't say specifically. I don't know.
Q. Okay. What documents have you looked at to -- to come to that determination?
A. What's been taken out of -- I can't be specific about it, but what's been taken out of inheritance and spent.
Q. Okay. But you don't know what they were spent on?

A. No. Well, one of them I do. She built a new house, Amy.

Q. Okay. And do you remember what time frame you believe she did that?

A. I don't know. A few years ago. I'm not for sure.

Q. Was it before or after your mom had passed away?

A. I don't know. I'd say a little bit after. I'm not real sure.

Q. Okay. Are you aware of any funds or money that was spent on your mom's care while she was at home?

A. Not that I'm aware of, no.

Q. Do you know where the money came from that paid for that care, the care that she received while she was at home?

A. From Mom's accounts or whatever. I'm not sure.

Q. Okay. You're not sure where the money came from?

A. No, I'm not. No, I'm not.

Q. Do you know -- so then you don't know who paid for the -- for that care that she received while she was at home, correct?

A. Well, I think she did for a while, and then she couldn't, and somebody else took care of it, I'm not sure.
Q. Do you know who that was?
A. No, uh-uh. I would say Anita, but I'm not sure. I shouldn't keep saying that. Sorry.
Q. Okay. Do you know how long she was receiving care at home?
A. No.
Q. There's also an allegation that you believe that your mother did not know that documents were prepared to disinherit your daughter.
A. Oh, yes.
Q. Okay. Do you recall that allegation?
A. Yeah.
Q. Okay. What evidence did you have that Ms. Nelva Brunsting did not know documents were prepared to disinherit your daughter?
A. I can't say. I don't know.
Q. Okay. Have you seen any documents that were prepared that would disinherit your daughter?
A. No, not that I can remember.
Q. Okay. Had you ever had any discussions with your -- with your mom or -- or anybody else about your mom or your dad possibly disinheriting your daughter?

A. No, no, no.

Q. Okay. Other than the two lawsuits, the one you have against Ms. Freed and her law firm, and the one you have against your sisters, do you have any other lawsuits pending right now related to your inheritance?

A. Not that I'm aware of. Sorry.

Q. With respect to the lawsuit that you have against your sisters, have any of them filed any claims against you?

A. Not that I'm aware of, no.

Q. There's another allegation that you've made which is that Nelva Brunsting was bullied.

A. Um-hmm.

Q. Okay. What evidence do you have that Ms. Brunsting was bullied by anyone?

A. What's happened and -- yeah.

Q. Okay. You don't have any evidence that my clients, Ms. Freed and her law firm, bullied Ms. Nelva Brunsting, do you?

A. Not evidence, I don't. Sorry.

Q. Okay.

A. Not that I can get specific about.

Q. I'm sorry. What now?

A. Not that I can get specific about.

Q. Okay. Well, what about even generally?
A. Yeah, they...
Q. You don't have anything?
A. Not that I can say, no.
Q. And I just have to ask this: You say not that you can say. What -- what do you mean by that, because you're under oath to tell the truth, so you can -- I mean, if you have evidence, I mean, this is my only time to get it.
A. I think she was -- I'm sorry, handled by my sisters in trying to get me out of this. I don't know what to say specifically.
Q. Okay. So it's -- it's related to -- to what you -- what you believe your sisters were trying to do, correct?
A. Yeah, it's -- the inheritance, yeah.
Q. Okay.
A. It should have been five ways, but they tried to keep me out of it.
Q. Okay. But you don't have anything specific that you're aware of --
A. Not that I can say.
Q. -- that Miss -- let me finish the question -- that Ms. Freed and her law firm were involved in that, correct?

A. Yes, they were, but I can't be specific about it. Yeah.

Q. Okay.

A. That's why we're here instead of it being over, anyway.

Q. When you said, "That's why we're here," what are you referring to?

A. Miss -- Mom died a few years ago, and it should have been over by then and split five ways --

Q. Okay.

A. -- instead of this legal problem.

Q. Well, let -- let me ask this: Did the other lawsuit that you have going, you filed that lawsuit, correct?

A. I don't remember.

Q. Okay.

A. Yes, I'm sure yeah.

Q. And then you were the one who filed this lawsuit, correct?

A. Um-hmm, we did, yes. Uh-huh, yes.

Q. Meaning you and your wife, correct?

A. Yes, uh-huh.

Q. Okay. And as far as you know sitting here today, your other sisters have not filed a lawsuit?

A. I don't know.

Q. According to your discovery responses and as you've discussed here, there were -- and I'm reading from one of your answers -- approximately almost 3,000 shares of Exxon stock that was transferred, correct?
A. As far as I'm aware, yeah.
Q. Okay. Do you know where there was -- where it was transferred to?
A. Yeah. To Anita's control, but I'm not sure who -- how it was handled.
Q. Okay. And again, you don't have any evidence that my client, Ms. Freed or her law firm, participated in that transfer --
A. No.
Q. -- of stock?
A. I don't have any evidence of that.
Q. Okay. And then you also mention the -- the Chevron stock, correct?
A. Um-hmm.
Q. Was that also transferred to someone?
A. From what I understand, yes.
Q. Do you know who it was transferred to?
A. No.
Q. And you don't have any evidence or information or facts to show that my clients, Ms. Freed and her law firm, participated in the transfer of any of that

stock?
A. I don't have any -- not that I can be specific about, yeah.
Q. Okay. And you also seem to be complaining about some money that Carol spent with respect to a joint account she had with your mother; is that correct?
A. Um-hmm.
Q. And do you know what those expenditures were for?
A. Expensive car and wasted -- I don't know. Yeah, that's the only one I know about, yeah.
Q. A car?
A. Yes.
Q. A car for herself?
A. Yes. Uh-huh, yeah.
Q. What kind of car?
A. Oh, some -- I don't know.
Q. Okay.
A. Some $40,000 car. Yeah, I don't know what she has.
Q. Anything else that you're -- that you believe Carol spent that money on?
A. Yes.
Q. What?

A. Her horses and her cats, yeah. I mean, she's got like 50 quarter horses and 100 cats that she takes care of.

Q. Okay. And what role, if any, do you know is -- or have evidence that my client played in Carol spending that money?

A. I don't know.

Q. Do you know whether any of that money was spent -- and according to your interrogatory responses, it's about $150,000 that she spent.

A. Okay.

Q. Does that sound about right to you?

A. Yeah.

Q. Do you know how much of that money was spent on your mother?

A. No.

Q. Do you know if any of that money was spent on your mother?

A. No, I don't know specifically, no.

Q. You also claim that about $155,000 were paid to family members or paid for family obligations. Do you recall that allegation?

A. Not specifically.

Q. Okay. And so then do -- do you have any recollection of where you believe that money came from,

any -- where that money was taken from and spent?

A. Out of Mom's money and spent -- I'm not sure, for Amy, Anita, and Carol. But I'm not sure, yeah.

Q. Okay. Then also with respect to -- to your damages, you complained of missing savings bonds. You understand that allegation?

A. Um-hmm.

Q. I'm sorry. Is that a "yes"?

A. Yes.

Q. Okay. And do you know how much in savings bonds is missing?

A. No.

Q. Are -- do you know that the savings bonds actually existed?

A. Yes.

Q. You -- you had seen them before?

A. Well, yes, uh-huh.

Q. Okay. Do you know where they were kept?

A. No. I would say Wells Fargo, but I don't know if that's right now.

Q. Okay. Have you done any -- made any effort to check at Wells Fargo to see if those savings bonds are there?

A. Not that I'm aware of, no.

Q. And then another complaint you have on -- on

the damages side of things is that there's $830,000 of income that came into the estate that's unaccounted for.

A. Yes.

Q. Do you recall that allegation?

A. Yes.

Q. Okay. And have you still not been able to determine what happened to the $830,000?

A. Not that I'm aware of, no.

Q. Okay. Do you know when the $830,000 came -- became missing?

A. No. Not specifically, no.

Q. Okay.

A. Over the last two -- two years. I'm not sure.

Q. Okay.

THE VIDEOGRAPHER: There's around five minutes.

MS. FOLEY: Five minutes?

THE VIDEOGRAPHER: Yes, ma'am.

MS. FOLEY: You can go ahead and change right now.

THE VIDEOGRAPHER: Off the record, 12:01.

(Break from 12:01 p.m. to 12:19 p.m.)

THE VIDEOGRAPHER: On the record, 12:19, Tape 3.

Q. (BY MS. FOLEY) All right. Mr. Brunsting, do you know -- have you ever seen any documents or letters that Ms. Nelva Brunsting may have written or drafted about any of the claims that you're making in this lawsuit?
A. No.
Q. Okay. I understand that in the -- in the past, I believe it was some of your sisters maybe have hired private investigators to follow people, follow you.
A. Um-hmm.
Q. Have you employed any private investigators?
A. No.
Q. Okay. And have you been provided any, I guess, sur- -- surveillance videos or recordings that any private investigator may have taken of you?
A. Not that I'm aware of, no.
Q. Okay. Have you -- are -- are you aware of any recordings any of your sisters may have done of -- of any phone calls with you?
A. Not that I'm aware of, no.
Q. And have you recorded any phone calls with your sisters?
A. No.
Q. Do you know whether or not your mother

assisted you in -- assisted you by paying any of your medical bills when you were -- when you fell ill?

A. No.

Q. Okay. Would it surprise you if she did?

A. Yeah.

Q. Why would that surprise you?

A. I don't -- I don't think -- I don't know.

Q. Okay. Let me ask you this: Do you believe you have the mental capacity to serve as the executor of your parents' estate?

A. I don't know.

Q. Okay.

A. I think we could do that together, but I don't know.

Q. Okay. Have you ever gone to see a doctor about that?

A. No. Not specifically, no.

Q. Okay. Has anyone ever challenged you on that issue, meaning has anyone ever claimed that they did not believe you had the capacity to serve as the executor of your parents' estate?

A. No.

Q. Are you having to, I guess, perform any duties related to your status as the executor of your parents' estate?

A. Doing this and -- and just getting it all resolved. I don't know what to say.

Q. Okay. When you say "doing this," what do you mean by that?

A. This interview and...

Q. Okay. Did -- did someone, either any of the -- your -- your siblings or the Court, tell you that you had to file this lawsuit against Ms. Freed and her law firm?

A. No.

Q. Was that solely your decision?

A. Our decision, yes.

Q. And when you say "our," you mean you and your wife?

A. Yes.

Q. You haven't met with any doctors who have questioned you about your capacity to serve as the executor of your parents' estate?

A. Not that I'm aware of, no.

Q. Another claim that you've made in this lawsuit is that Nelva Brunsting requested that you be reinstated as the successor trustee. Do you understand that claim?

A. Yes.

Q. Okay. How do you know that?

A. Because I was taken out of it, and then Mom wanted me to get the -- get it back again, yeah.

Q. How do you know she wanted you to get it back again?

A. I don't know.

Q. Did she tell you that?

A. No, no.

Q. Did someone else tell you that that's what she wanted?

A. No, not that I know of.

Q. Is that just kind of what you assume based on...

A. What's happened, yeah.

Q. Okay. And -- and did you convey this to your sisters, Anita and Amy?

A. No.

Q. You didn't tell them?

A. No. Of course, no.

Q. Why not?

A. They were on the other side. I wouldn't tell them anything. I mean, I don't know.

Q. Do you recall what your -- what your final prognosis was when you left the hospital?

A. Encephalitis, but -- yeah.

Q. Okay. And did they tell you how long it would

take you to recover?
A. No, no.
Q. Okay. Did they tell you to follow up -- follow up with any specialist?
A. Not that I'm aware of, no.
Q. Okay. I'm going to show you some -- some documents, and some of them I have copies of and some of them I don't.
MS. BAYLESS: Okay.
MS. FOLEY: So we're going to mark this as Exhibit No. 1.
This is your copy.
MS. BAYLESS: Okay.
(Exhibit No. 1 was marked.)
Q. (BY MS. FOLEY) And Exhibit No. 1 is --
MS. FOLEY: Sorry. I'm reaching over you.
Q. (BY MS. FOLEY) Exhibit No. 1 is the general dural -- durable power of attorney of Nelva E. Brunsting, and it's Bates labeled CHB6953 through CHB6979, and also V&F 000174 through -200.
Have you ever seen this document before?
A. Not that I'm aware of.
Q. Okay.
A. Oh, wait a minute.

Q. Sure. Go ahead and take your -- take your time looking at it.
A. Like I said, not that I'm aware of.
Q. Okay. If you would look at the third to the last page, so it's Page No. 25 of the document, and it's Bates-labeled CHB6977 --
A. Um-hmm.
Q. -- and V&F -198.
A. Yeah.
Q. All right. And do you -- do you see at the -- at the bottom of that page, there's a signature line.
A. Um-hmm.
Q. And underneath, it's typed "Nelva E. Brunsting."
A. Um-hmm.
Q. And then there's a signature on top of that line.
A. Um-hmm.
Q. Do you believe that that's Ms. Brunsting's signature?
A. I don't know.
Q. Okay. Have you -- have you talked to a handwriting expert --
A. No.
Q. -- about her signatures?

Okay. Now I'm going to hand you -- and this is one I only have one copy of. This is "The Re-" -- "The Restatement of the Brunsting Family Trust" --

A. Um-hmm.

Q. -- "Family Living Trust." I'm sorry.

MS. FOLEY: Oh, do you have two? Yeah, I have two.

Q. (BY MS. FOLEY) And it's Bates-labeled CHB317 through CHB403. So I have two copies.

MS. FOLEY: So I'm going to hand you a copy, so you can look at it first and then if you can give it to Mr. Brunsting.

MS. BAYLESS: Do we want to mark it?

MS. FOLEY: Huh?

MS. BAYLESS: Do you want to mark it?

MS. FOLEY: Yeah, we can mark it. We can mark this as Exhibit No. 2.

(Exhibit No. 2 was marked.)

MS. FOLEY: Let me make sure I have the same thing. Hold on.

Q. (BY MS. FOLEY) I'm handing you Exhibit 2, and I'm going to let you take a look at that.

A. Um-hmm.

Q. And let me know if you've ever seen that

document before.
A. Yes, I think I have.
Q. Okay. If you will flip over to Page -- excuse me.
It's 14-6 if you look at the bottom middle number, but then the CHB number is -315. So it's the -- literally the second-to-last page of the document.
A. You said 315?
Q. 315, yes, sir.
A. I don't have that in this stack.
Q. I'm sorry. Not 315. These are the same documents labeled differently. But it's the second-to-last page of the document.
A. Oh, -4-0 -- 402?
Q. Yes, 402.
A. Yeah.
Q. And do you see the -- the signature lines there?
A. Yeah, yeah, yeah.
Q. And do you see that there's a signature line on that -- on that page for Nelva Brunsting?
A. Um-hmm.
Q. Can you tell me if that appears to be Nelva Brunsting's signature?

A. I think it is, yeah.
Q. Okay.
A. I -- I don't know, though. Yeah.
Q. Okay.
A. Yeah, put down I don't know, yeah.
Q. Okay.
A. You know what...
Q. Now I'm going to hand you what we're going to mark as Exhibit No. 3.
(Exhibit No. 3 was marked.)
MS. FOLEY: I have a copy for you.
Q. (BY MS. FOLEY) And Exhibit No. 3 for the record is Bates-labeled CHB -- excuse me. CHB979 through CHB1015.
A. Um-hmm.
Q. Do you think you've ever seen this document before?
A. Yes, I think I have. I don't know if it's -- it's this share thing, and I remember seeing that somewhere.
Q. Okay. If you would flip to the very last page of this document --
A. Um-hmm.
Q. -- and you see that there's a signature block for Nelva E. Brunsting?

A. Um-hmm.
Q. And her signature appears twice on -- on this page?
A. Um-hmm.
Q. Do you believe that that appears to you to be Nelva Brunsting's signature?
A. I don't know.
Q. Okay. Now I'm going to hand you what we're going to mark as Exhibit No. 4.
(Exhibit No. 4 was marked.)
MS. FOLEY: And I only have one copy of it.
MS. BAYLESS: Okay.
Q. (BY MS. FOLEY) If you could take a look -- look at Exhibit No. 4, and if you could, could you read off the Bates-label number that's in the bottom right corner, the CHB number?
A. CHB444.
Q. Thank you, sir.
A. Okay.
Q. Have you ever seen that document before?
A. Not that I'm aware of.
Q. And do you see that there's a signature line for Nelva E. Brunsting on that document?
A. Yep.

Q. Does that appear to you to be Ms. Brunsting's signature?
A. No, I don't think so.
Q. Okay. And why don't you think that that one is her signature?
A. Because it looks like the same as Elmer's instead of it being different signatures.
Q. Okay.
A. It's like the same person wrote those -- both of them in there.
Q. Okay.
A. I don't know if that's right, though.
Q. Anything else about it that makes you not believe that it's Ms. Nelva E. Brunsting's signature?
A. No.
Q. Okay.
(Exhibit No. 5 was marked.)
Q. (BY MS. FOLEY) All right. Now I'm going to hand you what we're going to mark as Exhibit No. 5. And for the record, this Exhibit No. 5 is Bates-labeled CHB447 --
A. Um-hmm.
Q. -- through CHB452.
And if you could, take a look and see if you've ever seen this document before.

A. Not that I remember, no.
Q. Okay. If you would look on the very -- or second-to-last page of this document, and that is Bates-labeled CHB451 --
A. Um-hmm.
Q. -- and if you see there at the bottom of that page, there is a signature line for Nelva E. Brunsting, and a signature on top of that.
A. Um-hmm.
Q. Do you believe that based on what you're looking at, that that looks like to you Nelva E. Brunsting's signature?
A. I can't say. Sorry.
Q. Okay. Now I'm going to hand you what we're going to Bates-label -- excuse me -- as Exhibit No. 6, which is Bates-labeled CHB453.
(Exhibit No. 6 was marked.)
A. Um-hmm.
Q. (BY MS. FOLEY) Have you ever seen this document before?
A. Not that I remember, no.
Q. Okay. And if you look down towards the bottom of the --
A. Yeah.
Q. -- near the bottom of the page, there's a

signature line for Nelva E. Brunsting --
A. Yeah.
Q. -- and a -- a signature on top of that line. Does that appear to you to be the signature of Nelva E. Brunsting?
A. I -- I don't know.
Q. You don't know. Okay.
And now I'm going to hand you Exhibit Number -- actually, I'm going to hand you what we're going to mark as Exhibit No. 7, and it is Bates-labeled CHB454 through CHB464.
(Exhibit No. 7 was marked.)
MS. FOLEY: I only have one copy of that one.
Q. (BY MS. FOLEY) If you could take a look at that document, and let me know if you've seen it before.
A. Not that I'm aware of, no.
Q. Okay. If you look to the second-to-the-last -- I think it's the second-to-last page that has the signature line on it.
Do you see the signature line on that document?
A. Yes.
Q. And based on the -- the signature that shows

Nelva E. Brunsting, do you believe that that is Ms. Brunsting's signature?

A. I don't know.

Q. Okay. Thank you, sir.

Another claim that you've made in this lawsuit is that Ms. Freed and her law firm made oral misrepresentations to Nelva E. Brunsting when preparing documents that -- that she signed.

A. Um-hmm.

Q. Do you recall that allegation?

A. I remember the -- I recall the -- I -- I remember, yeah, a little bit about that.

Q. Okay. What oral misrepresentations do you believe Ms. Freed and her -- and/or her law firm made to Ms. Brunsting?

A. I don't know.

Q. Are you aware of any mis- -- specific misrepresentations that you believe Ms. Freed and her law firm made to Nelva E. Brunsting?

A. Not that I can say specifically, no.

Q. Okay. And what about generally?

A. I -- I can't answer.

Q. Okay. Is it because you don't recall anything, or you don't know of anything?

A. I don't know who -- which lawyer was that?

Q. Her name is Candace Freed.
A. Yeah. Candace Freed, yeah.
Q. And so you -- so you don't -- you're not aware of any?
A. No, not -- not that I know of.
Q. Okay. Now I'm going to hand you what we're going to mark as Exhibit No. 8.
(Exhibit No. 8 was marked.)
Q. (BY MS. FOLEY) And Exhibit No. 8 for the record is labeled CHB14489. And for whatever reason, CHB14490. And if you could take a look -- you can take a minute to look through --
A. Um-hmm.
Q. -- this e-mail.
A. (Reviewing document.)
What would you like to know about this?
Q. Okay. Have you had time to look at it?
A. Yeah.
Q. Okay. In May of -- of 2010, you had an e-mail address of "cbarch-" --
A. Yes.
Q. -- "-@sbcglobal.net" --
A. Yeah.
Q. -- is that correct?
A. Yes.

Q. Okay. And do you still have that e-mail address?

A. I don't know actually, yeah.

Q. Okay. Haven't e-mailed in a while?

A. No, not -- at all, the last few years. Sorry.

Q. Okay. Okay.

Have you ever -- do you recall this e-mail?

A. Yeah.

Q. Okay. And if you look at the e-mail that's in the middle of the first page --

A. Yeah, uh-huh.

Q. And this is an e-mail from Candace Curtis, correct?

A. Yeah.

Q. And is that your sister?

A. Yes.

Q. And in the first paragraph, the -- at the end, the last sentence of the first paragraph, the last -- I'm sorry, the last line of the first paragraph, it reads: "How is her mental state," question mark.

A. Yeah.

Q. "'Oh piffle' could mean several different things." And then you respond to this e-mail, correct?

A. (Pauses.)

Q. If you look at the e-mail --

A. Yeah.
Q. -- that's directly on top of that one?
A. Okay, yeah.
Q. That's your -- that's from you, correct?
A. Yeah.
Q. And you are responding to her question -- to Candace's question, correct?
A. Yes, uh-huh. She was wondering what was happening with Mom, yeah.
Q. Okay. So she's talking about Ms. Brunsting, correct?
A. Yes, uh-huh.
Q. And you -- you write a long paragraph here. But if you go to the -- one, two, three, four -- fourth line down, and the -- there's a sentence that starts towards the end of the fourth line that says: "Her mental state seems generally fine or normal to me, more forgetful for sure...she is worn out, getting groceries is a big deal for her."
Did I read that correctly?
A. Yes.
Q. Okay. So in May of 2010, you believe that your mom's mental state was generally fine or normal, correct?
A. Yeah, okay.

Q. Okay.
A. Physically a problem, but yeah, uh-huh.
Q. Okay. And you don't recall that changing prior to you getting ill, do you?
A. What's that?
Q. Her mental state.
A. It happened about the same time. I don't know, yeah.
Q. Okay. Do you know -- because I -- well, I think actually you've already testified that you got -- you became ill in 2009; is that correct?
A. Um-hmm.
Q. Okay. So this is 2010, which is later?
A. Um-hmm, yeah.
Q. Okay. And how sure are you that you became ill in 2009?
A. How sure am I?
Q. Yeah.
A. Oh, what happened five years ago was -- yeah.
Q. You think it could have been 2010?
A. No, I think it was -- I don't know.
Q. Okay. You just can't remember?
A. Yeah.
Q. Okay. But before you became ill --
A. Um-hmm.

Q. -- it's your belief that your mother's mental state was fine or normal, correct?

A. Yeah, yeah.

Q. Okay. And forgive me. I'm skipping over stuff, because I've already asked you about it, so -- as not to keep you here too long.

Are you aware that your -- one of your sisters or your sisters called the Adult Protective Services on your behalf?

A. Called them?

Q. Yes.

A. I don't know.

Q. Do you recall hearing anything about that?

A. No, not that --

Q. Anybody from Adult Protective Services ever contact you?

A. Not that I remember, no.

MS. FOLEY: Okay. Let's take another break here.

THE VIDEOGRAPHER: Off the record, 12:46.

(Break from 12:46 p.m. to 12:58 p.m.)

THE VIDEOGRAPHER: On the record, 12:58.

Q. (BY MS. FOLEY) Okay. Mr. Brunsting, I just have a few more questions for you --

A. Um-hmm.

Q. I'm going to hand you what we're going to mark as Exhibit No. 9.

(Exhibit No. 9 was marked.)

Q. (BY MS. FOLEY) If you would take a look at Exhibit No. 9...

A. (Reviewing document.)

Q. Have you seen Exhibit No. 9 before?

A. Not that I remember, but I should have, yes.

Q. Okay. If you'd flip over to the third page --

A. Um-hmm.

Q. -- of Exhibit No. 9...

A. Um-hmm.

Q. For the record, Exhibit 9 is CHB1 through -3, with --

A. Um-hmm.

Q. -- Attachment CHB3-1 and CHB3-2.

A. Um-hmm.

Q. But if you go to CHB3, Page 3 of the document, there is a signature line for Carl Brunsting and a signature on top. Do you see that?

A. Um-hmm.

Q. Is that your signature?

A. Yes. Un-huh.

Q. Okay. And based on this agreement, it looks like you paid a $30,000 advance retainer; is that

correct?

A. Um-hmm.

Q. And then you also agreed to an hourly rate for Ms. Bayless of $350 an hour?

A. Yes.

Q. Okay. And -- and as you said earlier, you have been paying her her fees; is that correct?

A. Yeah, or we have. Yeah.

Q. Okay. Sure.

A. Sorry.

Q. But earlier you -- you mentioned that part of the income that you have been receiving here lately dealt with some inheritance money --

A. Um-hmm.

Q. -- as a result of the death of -- a death in your wife's family; is that correct?

A. Yes, uh-huh.

Q. How much was that inheritance?

A. I don't want to say.

Q. You said, you don't want to say?

A. Yeah.

Q. Why not?

A. I don't -- the number wrong, yeah.

Q. Oh, you don't have the number?

A. No, no.

Q. Ok.

A. Several hundred thousand, but I don't know how many.

Q. Okay. When -- have you talked to Carol Brunsting about this lawsuit?

A. No.

Q. Have you talked to Candy about this lawsuit?

A. No. A little bit, yeah. No, not -- not about this lawsuit, no.

Q. Okay. When did you talk to her?

A. A couple of years ago or -- I don't know when that was, but we saw her when she came into town. Sorry.

Q. Okay. Y'all talked about this lawsuit?

A. No, not that I remember, no.

Q. Are you sure about that?

A. Yeah, yeah.

Q. Back in October of 2010, Miss -- I think the evidence is going to show in this case that Ms. Freed, the lawyer for -- for Nelva Brunsting, sent an e-mail to your sisters --

A. Um-hmm.

Q. -- regarding a meeting to discuss issues concerning Ms. Brunsting's capacity.

A. Um-hmm.

Q. And I believe you testified earlier you don't recall hearing anything about that.
A. That's right.
Q. Okay. During that time in October of 2010, were you still suffering from encephalitis?
A. Yes.
Q. Okay. And so if you would have been invited to participate in that phone call, would you have been able to?
A. I don't know at that time. I don't know. Yeah.
Q. Okay. And you said earlier -- you testified earlier that it has some effect on your brain; is that correct?
A. Yeah, yeah. The first part of it, I didn't -- yeah, I wouldn't have been able to be on the phone with...
Q. Okay. And if -- if you were -- if during that time period that you were suffering from encephalitis, if something would have happened to Ms. Brunsting at that time, do you believe that you would have had the capacity to serve as her executor?
A. No.
Q. Okay.
A. At that time, no.

Q. Would you have been able to act as her power of attorney at that time?

A. At that time, no.

Q. Okay. Would you have been able to -- would you have been able to manage her finances during the time that you were suffering from encephalitis?

A. No.

Q. Would you have been able to take care of the finances of the trust at that time?

A. No, uh-uh.

Q. Mr. Brunsting, do you believe that you have the capacity here today to testify in this deposition?

A. Yes.

Q. Okay. And have you understood all my questions here today?

A. More or -- yes, I have.

Q. Okay. And to the extent you didn't, did you ask me to rephrase or...

A. I'm sorry?

Q. To the extent that you did not understand me, did you ask me to rephrase the question and reask the question?

A. Not that I can remember. Sorry.

Q. You don't remember doing that?

A. No.

Q. Okay. But did you understand all my questions today?

A. More than -- yeah.

Q. Okay. All right.

A. More...

Q. What were you about to say?

A. More than I could have a couple of years ago or getting back from my illness.

Q. Got you. Got you.

MS. FOLEY: All right. I think I'll pass the witness.

MS. BAYLESS: We'll reserve our questions.

MS. FOLEY: Okay.

THE VIDEOGRAPHER: Off the record, 1:05.

(The deposition concluded at 1:05 p.m.)

WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE CORRECTION REASON FOR CHANGE

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CARL H. BRUNSTING

I, CARL H. BRUNSTING, solemnly swear or affirm under the pains and penalties of perjury that the foregoing pages contain a true and correct transcript of the testimony given by me at the time and place stated herein, except as noted on the previous correction page(s), and that I am signing this before a Notary Public.

_____
CARL H. BRUNSTING

STATE OF T E X A S *
COUNTY OF _____ *

Before me, _____, on this day personally appeared CARL H. BRUNSTING, known to me, or proved to me under oath, to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this, the _____ day of _____, 2015.

_____
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

My Commission Expires: _____

JOB NO. 177755

CAUSE NO. 2013-05455		
CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING,	)	IN THE DISTRICT COURT OF
Plaintiffs,	)	
V.	)	HARRIS COUNTY, TEXAS
CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC,	)	
Defendants.	)	164TH JUDICIAL DISTRICT

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF CARL H. BRUNSTING
FEBRUARY 3, 2015

I, Stephanie M. Harper, a Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CARL H. BRUNSTING, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____, 2015, to the witness, or to the attorney for the witness, for examination, signature, and return to U.S. Legal Support, Inc., by _____, 2015;

That the amount of time used by each party at the

deposition is as follows:

MS. ZANDRA E. FOLEY - 02:22

MS. BOBBIE G. BAYLESS - 00:00

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

MS. BOBBIE G. BAYLESS,
ATTORNEY FOR PLAINTIFFS.

MS. ZANDRA E. FOLEY,
ATTORNEY FOR DEFENDANTS.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this _____ of FEBRUARY, 2015.

_____
STEPHANIE M. HARPER
TEXAS CSR NO. 7433
Expiration Date: 12-31-16

JOB NO. 177755

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was _____ was not _____ returned to U.S. Legal Support, Inc., on _____, 2015.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. ZANDRA E. FOLEY, Custodial Attorney;

That $_____ is the deposition officer's charges to the Attorney for Defendants, MR. ZANDRA E. FOLEY, Texas Bar No. 24032085, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on _____ and filed with the Clerk.

Certified to by me this _____ day of _____, 2015.

_____
STEPHANIE M. HARPER
TEXAS CSR NO. 7433
Expiration Date: 12-31-16

U.S. Legal Support, Inc.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed on November 10, 2016, by Defendant Darlene Payne-Smith in the above styled cause (Dkt 84), should be Denied.

It is SO ORDERED

Date

The Honorable Alfred H Bennet
United Stated District Judge

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

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Civil Action No. 4:16-cv-01969
	§	
CANDACE KUNZ-FREED, ET AL.,	§	
	§	
Defendants.	§	

DEFENDANT DARLENE PAYNE SMITH'S REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

Pursuant to FED. R. CIV. P. 12(b)(1) and (6), Defendant Darlene Payne Smith (the "Defendant" or "Smith") files her Reply to Plaintiffs Candace Louise Curtis ("Curtis") and Rik Wayne Munson's ("Munson") (collectively, the "Plaintiffs") Response to Defendant's Motion to Dismiss the Verified Complaint for Damages for Lack of Subject Matter Jurisdiction and Failure to State a Claim (the "Motion"), and would respectfully show the Court the following:

I.
INTRODUCTION

On December 1, 2016, Plaintiffs filed their Response to Defendant's Motion to Dismiss. *See generally*, ECF No. 38 (the "Response"). Consistent with the Complaint under review, Plaintiffs' Response fails to provide a cogent response to ***any*** of independently dispositive bases for dismissal outlined in Defendant's Motion. The Response instead consists of nothing more than a timeline of the Brunsting siblings' various lawsuits, followed by a series of legal conclusions couched as fact.

For the following reasons, and those more fully-stated in Defendant's Motion, Plaintiffs' claims should be dismissed with prejudice.

II.
OBJECTION TO PURPORTED AMENDMENT OF COMPLAINT

Initially, Defendant objects to Plaintiffs' attempt to use the Response as a vehicle to "amend" their Complaint. Specifically, in Paragraphs 52 through 54 of the Response, Plaintiffs purport to "adopt and incorporate by reference" into the Complaint *the entire record in this case. See* Response at ¶¶52-54. FED. R. CIV. P. 10 permits, in some circumstances, the incorporation by reference of certain information. However, "an incorporation by reference is always accompanied by the requirement that it be done with a degree of specificity and clarity which would enable a responding party to easily determine the nature and extent of the incorporation." *See, e.g., Morrison v. Office of the United States Tr. (In re Morrison)*, 375 B.R. 179, 193 (Bankr. W.D. Pa. 2007). Where, as here, use of the incorporation by reference tool fails in this regard, the Court maintains authority to take appropriate action to regulate its use. *See id*.

Plaintiffs' amorphous incorporation of the "entire record before the Court," which encompasses many thousands of pages, without specifying which portions allegedly cure the numerous pleading defects highlighted by Defendants' Motion, does not comport with the purpose and function of Rule 10 and should be stricken.

III.
JURISDICTIONAL BASES FOR DISMISSAL

A. Plaintiffs' Claims are Not Ripe.

In her Motion, Defendant argued that Plaintiffs' claims must be dismissed because they are not ripe. Ripeness is a component of subject matter jurisdiction. *See Lopez v. City of Houston*, 617 F.3d 336, 341 (5th Cir. 2010). That is, because Plaintiffs' alleged injuries are contingent upon the occurrence of uncertain future events that may not occur as anticipated (*i.e.*, an unfavorable outcome in a pending probate proceeding), the Court lacks jurisdiction to hear those claims. *Id.* at

342. Plaintiffs have responded with only a conclusory statement that the claims are "over-ripe for remedy." *see* Response at ¶55. Because Plaintiffs have failed to offer any argument or support demonstrating *how* their claims – all of which are premised on an unfavorable future outcome in the pending Brunsting Probate Case – are ripe for adjudication, dismissal is appropriate.

B. Munson Lacks Article III Standing.

In the Response, Plaintiffs appear to argue that Munson elected to quit his job in order to focus full time on legal research and writing in connection with Curtis' multiple pending lawsuits. *See* Response at ¶¶44-46. Setting aside whether Munson is engaging in the unauthorized practice of law, his decision to do so is not a concrete "injury in fact" for standing purposes because it does not alter the fact that he is not a beneficiary of any of the Brunsting Trusts and has no direct stake in the outcome of this lawsuit. Plaintiffs have offered no authority to the contrary. Munson therefore lacks standing and all of his claims should be dismissed.

C. Attorney Immunity Bars Plaintiffs' Claims.

The Response, much like the Complaint, contains only two references to any alleged conduct by Defendant Smith[1/] – and both Defendant-specific references pertain to core litigation conduct incident to Defendant's execution of her professional duties to her client (Carole Ann Brunsting) in the Brunsting Probate Case. *See* Response at ¶¶7, 33 (alleging that Defendant, on behalf of her client, filed a counterclaim against Carl Brunsting); ¶¶36-37 (alleging that Defendant, on behalf of her client, filed an objection to Plaintiff Curtis' request to distribute Brunsting Trust funds to pay her attorney's fees for separate litigation against her siblings).[2/] As outlined in

---

1 As noted in the Motion, Defendant Smith had very limited involvement in one of the Brunsting series of lawsuits. She represented Plaintiff Curtis' sister – Carole Brunsting – in the Brunsting Probate Case until she withdraw as counsel in early 2016. Defendant Smith was not involved in the remaining Brunsting lawsuits in any respect.

2 The filing at issue is attached to Plaintiffs' Response. *See* ECF No. 89-8.

Defendant's Motion, the circumstances where an attorney can be liable to a non-client for litigation conduct incident to the execution of her professional duties to a client are extremely limited. Under Texas Law, attorneys retain complete immunity from suit for civil liability to non-clients for actions taken in connection with representing a client in litigation. *See Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 483 (Tex. 2015); *Troice v. Proskauer Rose, L.L.P.,* 816 F.3d 341, 348 (5th Cir. 2016). Because that is all that has been alleged here, Defendant remains immune from Plaintiffs' claims.

IV.
SUBSTANTIVE BASES FOR DISMISSAL

Defendant additionally moved for dismissal under Rule 12(b)(6) and the Response likewise does not address any of the substantive arguments raised that motion. Instead, the Response purports to "incorporate by reference" the entire record in this suit, provides a bullet-point list of the elements of Plaintiffs' RICO claim and then conclusively states that "Plaintiffs have sufficiently pled" each of those elements. *See* Response at ¶55-56. It is well established that the Court "not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions." *Ferrer v. Chevron Corp.,* 484 F.3d 776, 780 (5th Cir. 2007). Because the Complaint (and the Response) consist of nothing more than fantastical and conclusory assertions couched as facts, the Complaint should be dismissed.

V.
CONCLUSION

Accordingly, Defendant respectfully requests that the Court grant her Motion to Dismiss and dismiss Plaintiffs' claims with prejudice, and for such other and further relief, at law or in equity, to which Defendant may show herself to be justly entitled.

Respectfully submitted,

By: */s/ Barry Abrams*

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2016, a true and correct copy of the foregoing and/or attached instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure through the Southern District of Texas CM/ECF E-File System and as indicated below:

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Barry Abrams

United States District Court
Southern District of Texas
ENTERED
May 16, 2017
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:16-CV-1969
	§	
CANDACE KUNZ-FREED, *et al*,	§	
	§	
Defendants.	§	

ORDER

Before the Court are Defendants Candace Kunz-Freed and Albert Vacek Jr.'s (collectively, "V&F") Motion to Dismiss for Failure to State a Claim (Doc. #19), V&F's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. #20), Defendant Bobbie G. Bayless's ("Bayless") Motion to Dismiss (Doc. #23), Defendant Jill Willard Young's ("Young") Motion to Dismiss (Doc. #25), Defendant Anita Brunsting's ("Anita") Motion to Dismiss for Plaintiffs' Failure to State a Claim (Doc. #30), Defendant Amy Brunsting's ("Amy") Motion to Dismiss (Doc. #35), Defendants Stephen A. Mendel and Bradley E. Featherston's (collectively, "Mendel & Featherston") Motion to Dismiss (Doc. #36), Defendant Neal Spielman's ("Spielman") Motion to Dismiss (Doc. #39), Spielman's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction (Doc. #40), Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock, and Tony Baiamonte's (collectively, "Harris County Defendants") Motion to Dismiss (Doc. #53), Defendant Jason Ostrom's ("Ostrom") Motion to Dismiss (Doc. #78), Defendant Bernard Lilse Mathews, III's ("Mathews") Motion to Dismiss (Doc. #81), Defendants Gregory Lester's ("Lester") Motion to Dismiss (Doc. #83), Defendant Darlene Payne Smith's ("Smith") Motion to Dismiss (Doc. #84), Plaintiffs' Responses to said Motions (Docs. ##33, 34, 41, 45, 57, 62, 69, 85, 86, 87, 89), and various Defendants' Replies to Plaintiffs' Responses (Docs. #55, 63, 90).

Also before the Court are Young's Motion for Sanctions (Doc. #72), Plaintiffs' Motion for Consolidation (Doc. #43), Plaintiffs' Second Motion for Consolidation (Doc. #61), Young's Response in Opposition to Plaintiffs' Motions for Consolidation (Doc. #70), and Harris County Defendants' Response to Plaintiffs' Motions for Consolidation (Doc. #79).

Having considered the arguments and the applicable law, the Court grants V&F's Motion to Dismiss for Failure to State a Claim (Doc. #19), Bayless's Motion to Dismiss (Doc. #23), Young's Motion to Dismiss (Doc. #25), Anita's Motion to Dismiss (Doc. #30), Amy's Motion to Dismiss (Doc. #35), Mendel & Featherston's Motion to Dismiss (Doc. #36), Spielman's Motion to Dismiss (Doc. #39), Harris County Defendants' Motion to Dissmiss (Doc. #53), Ostrom's Motion to Dismiss (Doc. #78), Mathews' Motion to Dismiss (Doc. #81), Lester's Motion to Dismiss (Doc. #83), and Smith's Motion to Dismiss (Doc. #84). As such, Plaintiffs' Motions for Consolidation are denied as moot. The Court also denies Young's Motion for Sanctions.

I. Background

Plaintiffs' Complaint appears to relate to a probate matter in Harris County Probate Court No. 4, which the Plaintiffs generically call "Curtis v. Brunsting." Specifically, Plaintiffs assert almost fifty "claims" against more than fifteen defendants—including eleven lawyers, two judges, and one court reporter. These purported "claims" consist of fantastical allegations that some or all of the Defendants are members of a secret society and "cabal" known as the "Harris County Tomb Raiders," or "The Probate Mafia." Plaintiffs' claims rest on the assertion that this purported shadow organization engages in "poser advocacy" as an "exploitation opportunity" to "hijack" "familial wealth." And, as far as the Court can tell, this "poser advocacy" allegedly occurred in the matter of "Curtis v. Brunsting."

17-20360.3330

II. Legal Standard

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1964–65 (2007). In considering a 12(b)(6) motion to dismiss a complaint, courts generally must accept the factual allegations contained in the complaint as true. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982).

The court does not look beyond the face of the pleadings in determining whether the plaintiff has stated a claim under Rule 12(b)(6). *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). "[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [but] a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S. Ct. at 1964–65 (*citing Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994)) (citations omitted). And, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 127 S. Ct. at 1965. The supporting facts must be plausible—enough to raise a reasonable expectation that discovery will reveal further supporting evidence. *Id.* at 1959.

"A document filed pro se is 'to be liberally construed,' . . . and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

17-20360.3331

III. Analysis

A. Failure to State a Claim

Plaintiffs' Complaint, even when liberally construed, completely fails to plead anything close to a plausible claim for relief against any of the alleged Defendants. In fact, Plaintiffs' allegations cannot be characterized as anything more than fanciful, fantastic, and delusional. Plaintiffs' allegations consist entirely of outlandish and conclusory factual assertions accompanied by a formulaic recitation of the elements of numerous causes of action unsupported by the alleged facts. Further, most of Plaintiffs alleged "claims" are either based on statutes that do not create a private cause of action, or simply do not exist under Texas or Federal law.

In regards to Plaintiffs' alleged RICO claim, Plaintiffs fail to plead any facts establishing they have standing under § 1964(c) to assert civil RICO claims against any of the Defendants because Plaintiffs fail to plead facts showing a recognizable injury to their business or property caused by the alleged RICO violations. *See* 18 U.S.C. § 1964(c) ("[a]ny person injured in his business or property by reason of a violation of [RICO] may sue"); *Allstate Inc. Co. V. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (*citing Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)) (stating that to plead standing a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"). Plaintiffs have also failed to plead any facts establishing a plausible claim that any of the Defendants engaged in a "racketeering activity" sufficient to trigger the RICO statute. Accordingly, Plaintiffs' RICO claim fails as a matter of law.

As Plaintiffs' Complaint is completely devoid of any well-pleaded facts establishing a single plausible claim for relief against any of the named Defendants, the Court grants V&F's, Bayless's, Young's, Anita's, Amy's, Mendel & Featherston's, Spielman's, Ostrom's, Mathews',

Lester's, and Smith's Motions to Dismiss for Failure to State a Claim.

B. Immunity

i. Attorney Immunity

Under Texas law, "attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). Plaintiffs' allegations against Defendants Young, Smith, Bayless, Spielman, Mendel & Featherston, and Mathews' ("Attorney Immunity Defendants"), at best, assert wrongdoing based solely on actions taken during the representation of a client in litigation. Such claims are clearly barred by attorney immunity. Accordingly, all of the Attorney Immunity Defendants' Motions to Dismiss are also granted on this ground.

ii. Judicial Immunity

Judicial Immunity entitles judges to absolute immunity from suit for acts undertaken in their judicial capacity, even if they are done maliciously or corruptly. *Price v. Porter*, 351 F. Spp'x 925, 927 (5th Cir. 2009) (citing *Mireles v. Waco*, 502 U.S. 9, 10 (1991)). The sole exception is when a plaintiff alleges that a judge acted without jurisdiction or in a nonjudicial role. *Id.* Here, the allegations against Judges Butts and Comstock concern only actions taken in their judicial capacity. Accordingly, Judicial Immunity completely forecloses Plaintiffs' claims against Judge Butts and Judge Comstock.[1]

[1] In regards to Tony Baiamonte, a contract court reporter that was hired to steno-graphically record a single hearing in a probate proceeding, there are simply no factual allegations made against him within the complaint. Accordingly, it is difficult to determine whether immunity applies. Regardless, without any factual assertions as to Mr. Baiamonte, the Plaintiffs fail to

C. **Frivolous Complaint**

As laid out above, Plaintiffs' allegations are frivolous because Plaintiffs have completely failed to allege any facts supporting the delusional scenario articulated in their Complaint, much less facts giving rise to a plausible claim for relief.

"District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint sua sponte even when the plaintiff has paid the required filing fee." *Fitzgerald v. First East Seventh Street Tenants*, 221 F.3d 362, 363–64 (2d Cir. 2000); *Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995); *Holman v. Wooten*, No. 4:09–1634–CWH, 2010 WL 691263, at *2 (D.S.C. Feb.24, 2010); *Larrimore v. Bank of New York Mellon*, No. 4:09–1647–TLW–TER, 2009 WL 4920776, at *2 (S.D.N.Y. Dec. 11, 2009); *McCracken v. Natale*, No. 04 Civ. 5456, 2008 WL 5274317 (E.D.N.Y. Dec.17, 2008). The Supreme Court, while never having directly ruled on the matter, has also stated (albeit in dicta) that federal courts have the inherent power to dismiss frivolous lawsuits. *See Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 307–308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) ("Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision.").

As Plaintiffs' allegations are undeniably legally insufficient to create a plausible claim, they are clearly frivolous (and borderline malicious). Along with Plaintiffs' absolute failure to plead a plausible claim for relief, most of the defendants are also entitled to attorney, judicial, or qualified immunity. Accordingly, Plaintiffs' claims are also dismissed via this Court's inherit ability to dismiss frivolous complaints.

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state a plausible claim against him. Accordingly, Harris County Defendants' Motion to Dismiss is also granted on that ground.

D. Sanctions

Plaintiffs' passionate pleas to this Court during the December 15, 2016 Motion Hearing suggest that Ms. Curtis and Mr. Munson do not understand the legal shortcomings of their Complaint. The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, Plaintiffs should now realize that all claims brought in this litigation—or any new claims relating to the subject matter of Plaintiffs' Complaint—lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim. Accordingly, the Court cautions Plaintiffs from additional meritless filings.

IV. Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss are GRANTED, Young's Motion for Sanctions is DENIED, Plaintiffs' Motions for Consolidation are DENIED as moot, and all of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

It is so ORDERED.

MAY 16 2017

Date

The Honorable Alfred H. Bennett
United States District Judge

17-20360.3335

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

MAY 26 2017
#HOU0727706
David J. Bradley, Clerk of Court

File Number 4:16-cv-1969

Candace Louise Curtis, et al Plaintiffs	§ § § §	Notice of Appeal
v	§	
Candace Kunz-Freed, et al Defendants	§ § §	

Notice is hereby given that Candace Louise Curtis and Rik Munson, Plaintiffs in the above-named case, hereby appeal to the United States Court of appeals for the Fifth Circuit, from a District Court Order dismissing all claims with prejudice, entered in the above action on the 16th day of May 2017.

Candace L. Curtis

Rik W. Munson

Certificate of Service

I hereby certify that a sufficient number of true and correct copies of the foregoing were served by U.S. Mail upon the United States District Court Clerk in Civil Action No. 4:16-cv-1969 on May 24th 2017.

Candace L. Curtis

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

Candace Louise Curtis, et al.

versus

Case Number: 4:16−cv−01969
Judge Alfred H Bennett

Candace Kunz−Freed, et al.

NOTICE OF THE FILING OF AN APPEAL

An appeal has been filed by Candace Curtis, Rik Munson. The following appeal and related motions are pending in the District Court:

Notice of Appeal − #92

If the appellant fails to comply with the following requirements, then the Clerk of Court will submit a certificate of noncompliance to the Fifth Circuit Court of Appeals.

FILING FEE:
A filing fee is required to proceed on appeal. If the filing fee has not already been paid, then it must be paid or a motion to proceed *in forma pauperis* must be filed, unless appellant is an United States government agency.

TRANSCRIPTS:
If hearings were held in this case and the transcripts were not already produced, then transcripts must be ordered. Pursuant to FRAP 10(b)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal. Under Fifth Circuit Rule 10, the appellant's order of the transcript must be made on a DKT−13 Transcript Order form. The DKT−13 must be filed regardless of whether there were hearings or transcripts needed. A link to the DKT−13 form and instructions for ordering transcripts are available on the court's website at www.txs.uscourts.gov/page/OrderingTranscripts.

If there were no hearings or no transcripts are needed, file the DKT−13 form with the appropriate box marked to indicate so. For cases where transcripts are needed, prepare a separate DKT−13 for each reporter from whom you are ordering transcripts. All transcripts for electronically recorded proceedings may be ordered on one form. Each form should indicate the exact dates of the proceedings to be transcribed by that reporter.

This case had hearings. Reporter(s): H. Alcaraz, K. Metzger.

EXHIBITS:
The Fifth Circuit requires exhibits admitted into evidence be included in the electronic record for transmission to the Fifth Circuit. Exhibits in the custody of the court will be electronically filed by court staff. Exhibits previously returned to the parties must be immediately electronically filed in this case by the attorney, using event Exhibits in the Trial Documents category in ECF.

Date: May 30, 2017.

David J. Bradley, Clerk

17-20360.3337

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

MAY 26 2017
#HOU0727706
David J. Bradley, Clerk of Court

File Number 4:16-cv-1969

Candace Louise Curtis, et al Plaintiffs	§	
	§	Notice of Appeal
v	§	
Candace Kunz-Freed, et al Defendants	§	

Notice is hereby given that Candace Louise Curtis and Rik Munson, Plaintiffs in the above-named case, hereby appeal to the United States Court of appeals for the Fifth Circuit, from a District Court Order dismissing all claims with prejudice, entered in the above action on the 16th day of May 2017.

Candace L. Curtis

Rik W. Munson

Certificate of Service

I hereby certify that a sufficient number of true and correct copies of the foregoing were served by U.S. Mail upon the United States District Court Clerk in Civil Action No. 4:16-cv-1969 on May 24th 2017.

Candace L. Curtis

United States District Court
Southern District of Texas
ENTERED
May 16, 2017
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:16-CV-1969
	§	
CANDACE KUNZ-FREED, *et al*,	§	
	§	
Defendants.	§	

ORDER

Before the Court are Defendants Candace Kunz-Freed and Albert Vacek Jr.'s (collectively, "V&F") Motion to Dismiss for Failure to State a Claim (Doc. #19), V&F's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. #20), Defendant Bobbie G. Bayless's ("Bayless") Motion to Dismiss (Doc. #23), Defendant Jill Willard Young's ("Young") Motion to Dismiss (Doc. #25), Defendant Anita Brunsting's ("Anita") Motion to Dismiss for Plaintiffs' Failure to State a Claim (Doc. #30), Defendant Amy Brunsting's ("Amy") Motion to Dismiss (Doc. #35), Defendants Stephen A. Mendel and Bradley E. Featherston's (collectively, "Mendel & Featherston") Motion to Dismiss (Doc. #36), Defendant Neal Spielman's ("Spielman") Motion to Dismiss (Doc. #39), Spielman's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction (Doc. #40), Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock, and Tony Baiamonte's (collectively, "Harris County Defendants") Motion to Dismiss (Doc. #53), Defendant Jason Ostrom's ("Ostrom") Motion to Dismiss (Doc. #78), Defendant Bernard Lilse Mathews, III's ("Mathews") Motion to Dismiss (Doc. #81), Defendants Gregory Lester's ("Lester") Motion to Dismiss (Doc. #83), Defendant Darlene Payne Smith's ("Smith") Motion to Dismiss (Doc. #84), Plaintiffs' Responses to said Motions (Docs. ##33, 34, 41, 45, 57, 62, 69, 85, 86, 87, 89), and various Defendants' Replies to Plaintiffs' Responses (Docs. #55, 63, 90).

Also before the Court are Young's Motion for Sanctions (Doc. #72), Plaintiffs' Motion for Consolidation (Doc. #43), Plaintiffs' Second Motion for Consolidation (Doc. #61), Young's Response in Opposition to Plaintiffs' Motions for Consolidation (Doc. #70), and Harris County Defendants' Response to Plaintiffs' Motions for Consolidation (Doc. #79).

Having considered the arguments and the applicable law, the Court grants V&F's Motion to Dismiss for Failure to State a Claim (Doc. #19), Bayless's Motion to Dismiss (Doc. #23), Young's Motion to Dismiss (Doc. #25), Anita's Motion to Dismiss (Doc. #30), Amy's Motion to Dismiss (Doc. #35), Mendel & Featherston's Motion to Dismiss (Doc. #36), Spielman's Motion to Dismiss (Doc. #39), Harris County Defendants' Motion to Dissmiss (Doc. #53), Ostrom's Motion to Dismiss (Doc. #78), Mathews' Motion to Dismiss (Doc. #81), Lester's Motion to Dismiss (Doc. #83), and Smith's Motion to Dismiss (Doc. #84). As such, Plaintiffs' Motions for Consolidation are denied as moot. The Court also denies Young's Motion for Sanctions.

I. Background

Plaintiffs' Complaint appears to relate to a probate matter in Harris County Probate Court No. 4, which the Plaintiffs generically call "Curtis v. Brunsting." Specifically, Plaintiffs assert almost fifty "claims" against more than fifteen defendants—including eleven lawyers, two judges, and one court reporter. These purported "claims" consist of fantastical allegations that some or all of the Defendants are members of a secret society and "cabal" known as the "Harris County Tomb Raiders," or "The Probate Mafia." Plaintiffs' claims rest on the assertion that this purported shadow organization engages in "poser advocacy" as an "exploitation opportunity" to "hijack" "familial wealth." And, as far as the Court can tell, this "poser advocacy" allegedly occurred in the matter of "Curtis v. Brunsting."

17-20360.3340

II. Legal Standard

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1964–65 (2007). In considering a 12(b)(6) motion to dismiss a complaint, courts generally must accept the factual allegations contained in the complaint as true. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982).

The court does not look beyond the face of the pleadings in determining whether the plaintiff has stated a claim under Rule 12(b)(6). *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). "[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [but] a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S. Ct. at 1964–65 (*citing Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994)) (citations omitted). And, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 127 S. Ct. at 1965. The supporting facts must be plausible—enough to raise a reasonable expectation that discovery will reveal further supporting evidence. *Id.* at 1959.

"A document filed pro se is 'to be liberally construed,' . . . and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

III. Analysis

A. Failure to State a Claim

Plaintiffs' Complaint, even when liberally construed, completely fails to plead anything close to a plausible claim for relief against any of the alleged Defendants. In fact, Plaintiffs' allegations cannot be characterized as anything more than fanciful, fantastic, and delusional. Plaintiffs' allegations consist entirely of outlandish and conclusory factual assertions accompanied by a formulaic recitation of the elements of numerous causes of action unsupported by the alleged facts. Further, most of Plaintiffs alleged "claims" are either based on statutes that do not create a private cause of action, or simply do not exist under Texas or Federal law.

In regards to Plaintiffs' alleged RICO claim, Plaintiffs fail to plead any facts establishing they have standing under § 1964(c) to assert civil RICO claims against any of the Defendants because Plaintiffs fail to plead facts showing a recognizable injury to their business or property caused by the alleged RICO violations. *See* 18 U.S.C. § 1964(c) ("[a]ny person injured in his business or property by reason of a violation of [RICO] may sue"); *Allstate Inc. Co. V. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (*citing Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)) (stating that to plead standing a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"). Plaintiffs have also failed to plead any facts establishing a plausible claim that any of the Defendants engaged in a "racketeering activity" sufficient to trigger the RICO statute. Accordingly, Plaintiffs' RICO claim fails as a matter of law.

As Plaintiffs' Complaint is completely devoid of any well-pleaded facts establishing a single plausible claim for relief against any of the named Defendants, the Court grants V&F's, Bayless's, Young's, Anita's, Amy's, Mendel & Featherston's, Spielman's, Ostrom's, Mathews',

Lester's, and Smith's Motions to Dismiss for Failure to State a Claim.

B. Immunity

i. Attorney Immunity

Under Texas law, "attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). Plaintiffs' allegations against Defendants Young, Smith, Bayless, Spielman, Mendel & Featherston, and Mathews' ("Attorney Immunity Defendants"), at best, assert wrongdoing based solely on actions taken during the representation of a client in litigation. Such claims are clearly barred by attorney immunity. Accordingly, all of the Attorney Immunity Defendants' Motions to Dismiss are also granted on this ground.

ii. Judicial Immunity

Judicial Immunity entitles judges to absolute immunity from suit for acts undertaken in their judicial capacity, even if they are done maliciously or corruptly. *Price v. Porter*, 351 F. Spp'x 925, 927 (5th Cir. 2009) (citing *Mireles v. Waco*, 502 U.S. 9, 10 (1991)). The sole exception is when a plaintiff alleges that a judge acted without jurisdiction or in a nonjudicial role. *Id.* Here, the allegations against Judges Butts and Comstock concern only actions taken in their judicial capacity. Accordingly, Judicial Immunity completely forecloses Plaintiffs' claims against Judge Butts and Judge Comstock.[1]

[1] In regards to Tony Baiamonte, a contract court reporter that was hired to steno-graphically record a single hearing in a probate proceeding, there are simply no factual allegations made against him within the complaint. Accordingly, it is difficult to determine whether immunity applies. Regardless, without any factual assertions as to Mr. Baiamonte, the Plaintiffs fail to

C. **Frivolous Complaint**

As laid out above, Plaintiffs' allegations are frivolous because Plaintiffs have completely failed to allege any facts supporting the delusional scenario articulated in their Complaint, much less facts giving rise to a plausible claim for relief.

"District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint sua sponte even when the plaintiff has paid the required filing fee." *Fitzgerald v. First East Seventh Street Tenants*, 221 F.3d 362, 363–64 (2d Cir. 2000); *Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995); *Holman v. Wooten*, No. 4:09–1634–CWH, 2010 WL 691263, at *2 (D.S.C. Feb.24, 2010); *Larrimore v. Bank of New York Mellon*, No. 4:09–1647–TLW–TER, 2009 WL 4920776, at *2 (S.D.N.Y. Dec. 11, 2009); *McCracken v. Natale*, No. 04 Civ. 5456, 2008 WL 5274317 (E.D.N.Y. Dec.17, 2008). The Supreme Court, while never having directly ruled on the matter, has also stated (albeit in dicta) that federal courts have the inherent power to dismiss frivolous lawsuits. *See Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 307–308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) ("Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision.").

As Plaintiffs' allegations are undeniably legally insufficient to create a plausible claim, they are clearly frivolous (and borderline malicious). Along with Plaintiffs' absolute failure to plead a plausible claim for relief, most of the defendants are also entitled to attorney, judicial, or qualified immunity. Accordingly, Plaintiffs' claims are also dismissed via this Court's inherit ability to dismiss frivolous complaints.

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state a plausible claim against him. Accordingly, Harris County Defendants' Motion to Dismiss is also granted on that ground.

D. Sanctions

Plaintiffs' passionate pleas to this Court during the December 15, 2016 Motion Hearing suggest that Ms. Curtis and Mr. Munson do not understand the legal shortcomings of their Complaint. The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, Plaintiffs should now realize that all claims brought in this litigation—or any new claims relating to the subject matter of Plaintiffs' Complaint—lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim. Accordingly, the Court cautions Plaintiffs from additional meritless filings.

IV. Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss are GRANTED, Young's Motion for Sanctions is DENIED, Plaintiffs' Motions for Consolidation are DENIED as moot, and all of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

It is so ORDERED.

MAY 16 2017

Date

The Honorable Alfred H. Bennett
United States District Judge

17-20360.3345

APPEAL,APPEAL_NAT

U.S. District Court
SOUTHERN DISTRICT OF TEXAS (Houston)
CIVIL DOCKET FOR CASE #: 4:16-cv-01969
Internal Use Only

Curtis et al v. Kunz-Freed et al
Assigned to: Judge Alfred H Bennett
Cause: 18:1964 Racketeering (RICO) Act

Date Filed: 07/05/2016
Jury Demand: None
Nature of Suit: 470 Racketeer/Corrupt Organization
Jurisdiction: Federal Question

Plaintiff

Candace Louise Curtis represented by **Candace Louise Curtis**
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V.

Defendant

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ATTORNEY TO BE NOTICED

17-20360.3346

Defendant

Albert Vacek, Jr. represented by **Cory S Reed**
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Defendant

Bernard Lyle Matthews, III represented by **Bernard Lilse Mathews , III**
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Defendant

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Defendant

Toni Biamonte represented by **Laura Beckman Hedge**
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Defendant

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Amy Brunsting represented by **Amy Brunsting**
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New Braunfels, TX 78132
PRO SE

Defendant

Does 1-99

Date Filed	#	Docket Text
07/05/2016	1	COMPLAINT against All Defendants (Filing fee $ 400) filed by Rick Wayne Munson, Candace Louise Curtis. (Attachments: # 1 Civil Cover Sheet, # 2 Cover Letter)(rosaldana, 4) (Main Document 1 replaced on 7/7/2016) (rosaldana, 4). (Entered: 07/05/2016)
07/05/2016	2	Plaintiff Candace Louise Curtis' MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 7/26/2016. (Attachments: # 1 Proposed Order) (rosaldana, 4) (Entered: 07/05/2016)
07/05/2016		Initial Filing fee: $400 re: 1 Complaint, receipt number HOU064001, filed. (thanniable, 4) (Entered: 07/05/2016)
07/06/2016	3	ORDER for Initial Pretrial and Scheduling Conference and Order to Disclose Interested Persons. Initial Conference set for 10/28/2016 at 09:00 AM in Courtroom 8B before Judge Alfred H Bennett(Signed by Judge Alfred H Bennett) Parties notified. (ckrus, 4) (Entered: 07/06/2016)
07/20/2016	6	CERTIFICATE OF INTERESTED PARTIES by Plantiffs, filed. (jtabares, 1) (Entered: 07/22/2016)
07/22/2016	4	WAIVER OF SERVICE Returned Executed as to Candace Kunz-Freed served on 7/9/2016, answer due 9/7/2016, filed.(Reed, Cory) (Entered: 07/22/2016)
07/22/2016	5	WAIVER OF SERVICE Returned Executed as to Albert Vacek, Jr served on 7/12/2016, answer due 9/12/2016, filed.(Reed, Cory) (Entered: 07/22/2016)
07/25/2016	7	Mail Returned Undeliverable as to Candace Louise Curtis re: 3 Order for Initial Conference - FORM,, filed. (klopez, 7) (Entered: 07/28/2016)
08/05/2016	9	WAIVER OF SERVICE Returned Executed as to Christine Riddle Butts served on 7/9/2016, answer due 9/7/2016, filed.

		(dnoriega, 1) (Entered: 08/08/2016)
08/05/2016	10	WAIVER OF SERVICE Returned Executed as to Clarinda Comstock served on 7/9/2016, answer due 9/7/2016, filed. (dnoriega, 1) (Entered: 08/08/2016)
08/08/2016	8	WAIVER OF SERVICE Returned Executed as to Jason Ostrom served on 7/9/2016, answer due 9/7/2016, filed.(Ostrom, Jason) (Entered: 08/08/2016)
08/10/2016	11	WAIVER OF SERVICE Returned Executed as to Bobbie Bayless served on 8/2/2016, answer due 10/3/2016, filed. (dnoriega, 1) (Entered: 08/11/2016)
08/10/2016	12	NOTICE of Related Case by Rick Wayne Munson, filed. (dnoriega, 1) (Entered: 08/11/2016)
08/10/2016	13	MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, Rick Wayne Munson, filed. Motion Docket Date 8/31/2016. (Attachments: # 1 Proposed Order)(dnoriega, 1) (Entered: 08/11/2016)
08/12/2016	14	ORDER granting 13 MOTION Permission for Electronic Case Filing (Signed by Judge Alfred H Bennett) Parties notified. (olindor, 4) (Entered: 08/12/2016)
08/16/2016	15	Request for Issuance of Summons as to Toni Biamonte, Amy Brunsting, Anita Brunsting, Bradley Featherston, Gregory Lester, Bernard Lyle Matthews, III, Stephen A. Mendel, Darlene Payne Smith, Neal Spielman, Jill Williard Young, filed.(Munson, Rik) (Entered: 08/16/2016)
08/17/2016		Summons Issued as to Toni Biamonte, Amy Brunsting, Anita Brunsting, Bradley Featherston, Gregory Lester, Bernard Lyle Matthews, III, Stephen A. Mendel, Darlene Payne Smith, Neal Spielman, Jill Williard Young. Issued summons returned to plaintiff by: First-class mail, filed.(hler, 4) (Entered: 08/17/2016)
08/24/2016	16	First CERTIFICATE OF INTERESTED PARTIES by Jason Ostrom, filed.(Ostrom, Jason) (Entered: 08/24/2016)
08/30/2016	17	WAIVER OF SERVICE Returned Executed as to Toni Biamonte served on 8/16/2016, answer due 10/17/2016, filed.(ssilva, 7) (Entered: 08/31/2016)
09/02/2016	18	Unopposed MOTION for Extension of Time File Responsive

		Pleading by Jason Ostrom, filed. Motion Docket Date 9/23/2016. (Attachments: # 1 Proposed Order)(Ostrom, Jason) (Entered: 09/02/2016)
09/07/2016	19	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 9/28/2016. (Reed, Cory) (Entered: 09/07/2016)
09/07/2016	20	MOTION to Dismiss *For Lack of Subject Matter Jurisdiction* by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 9/28/2016. (Reed, Cory) (Entered: 09/07/2016)
09/07/2016	21	CERTIFICATE OF INTERESTED PARTIES by Bobbie Bayless, filed.(Bayless, Bobbie) (Entered: 09/07/2016)
09/07/2016	22	CERTIFICATE OF INTERESTED PARTIES by Candace Kunz-Freed, Albert Vacek, Jr, filed.(Reed, Cory) (Entered: 09/07/2016)
09/07/2016	23	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Bobbie Bayless, filed. Motion Docket Date 9/28/2016. (Attachments: # 1 Proposed Order)(Bayless, Bobbie) (Entered: 09/07/2016)
09/08/2016	24	ORDER granting 18 Unopposed MOTION for Extension of Time File Responsive Pleading. Responses due by 11/7/2016.(Signed by Judge Alfred H Bennett) Parties notified.(olindor, 4) (Entered: 09/09/2016)
09/12/2016	28	MOTION for Access to Electronic Filing by Anita Brunsting, filed. Motion Docket Date 10/3/2016. (Attachments: # 1 Proposed Order)(mxperez, 5) (Entered: 09/19/2016)
09/12/2016	29	CERTIFICATE OF INTERESTED PARTIES by Anita Brunsting, filed.(ocasas, 7) (Entered: 09/19/2016)
09/15/2016	25	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Jill Williard Young, filed. Motion Docket Date 10/6/2016. (Attachments: # 1 Exhibit A)(Schaefer, Rafe) (Entered: 09/15/2016)
09/15/2016	26	Supplemental MEMORANDUM *addendum* re: 1 Complaint by Candace Louise Curtis, filed. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit, # 17 Exhibit, # 18 Exhibit, # 19 Exhibit, # 20 Exhibit, # 21 Exhibit,

		# 22 Exhibit, # 23 Exhibit, # 24 Exhibit, # 25 Exhibit, # 26 Exhibit, # 27 Exhibit, # 28 Exhibit, # 29 Exhibit, # 30 Exhibit, # 31 Exhibit)(Munson, Rik) (Entered: 09/15/2016)
09/16/2016	30	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Anita Brunsting, filed. Motion Docket Date 10/7/2016. (Attachments: # 1 Proposed Order)(rnieto, 1) (Entered: 09/22/2016)
09/16/2016	31	MOTION for Access to Electronic Filing by Amy Brunsting, filed. Motion Docket Date 10/7/2016. (Attachments: # 1 Proposed Order) (rnieto, 1) (Entered: 09/22/2016)
09/16/2016	32	CERTIFICATE OF INTERESTED PARTIES by Amy Brunsting, filed. (rnieto, 1) (Entered: 09/23/2016)
09/18/2016	27	AFFIDAVIT, filed.(Munson, Rik) (Entered: 09/18/2016)
09/21/2016	35	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Amy Brunsting, filed. Motion Docket Date 10/12/2016. (Attachments: # 1 Proposed Order)(avleal, 1) (Entered: 09/28/2016)
09/27/2016	33	RESPONSE in Opposition to 20 MOTION to Dismiss *For Lack of Subject Matter Jurisdiction*, 19 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit)(Munson, Rik) (Entered: 09/27/2016)
09/27/2016	34	RESPONSE in Opposition to 23 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit)(Munson, Rik) (Entered: 09/27/2016)
09/30/2016	36	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - *Rule 12(b)(6)* by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 10/21/2016. (Mendel, Stephen) (Entered: 09/30/2016)
09/30/2016	37	First CERTIFICATE OF INTERESTED PARTIES by Bradley Featherston, Stephen A. Mendel, filed.(Mendel, Stephen) (Entered: 09/30/2016)
10/03/2016	38	MOTION to Strike 26 Memorandum,, by Jill Williard Young,

		filed. Motion Docket Date 10/24/2016. (Schaefer, Rafe) (Entered: 10/03/2016)
10/03/2016	39	MOTION to Dismiss by Neal Spielman, filed. Motion Docket Date 10/24/2016. (Schexnayder, Martin) (Entered: 10/03/2016)
10/03/2016	40	MOTION to Dismiss *based on lack of subject matter jurisdiction* by Neal Spielman, filed. Motion Docket Date 10/24/2016. (Schexnayder, Martin) (Entered: 10/03/2016)
10/03/2016	41	RESPONSE to 25 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Candace Louise Curtis. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit)(Curtis, Candace) (Entered: 10/03/2016)
10/04/2016	42	JOINDER in 38 MOTION to Strike 26 Memorandum,, , filed by Candace Kunz-Freed, Albert Vacek, Jr. (Reed, Cory) (Entered: 10/04/2016)
10/05/2016	43	MOTION to Consolidate Lead Case No. 4:12-cv-0592 and Member Case No. 4:16-cv-01969 by Candace Louise Curtis, filed. Motion Docket Date 10/26/2016. (Curtis, Candace) (Entered: 10/05/2016)
10/05/2016	48	RETURN of Service of SUMMONS Executed as to Jill Williard Young served on 8/26/2016, answer due 9/16/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/05/2016	49	RETURN of Service of SUMMONS Executed as to Anita Brunsting served on 8/25/2016, answer due 9/15/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/05/2016	50	RETURN of Service of SUMMONS Executed as to Gregory Lester served on 9/2/2016, answer due 9/23/2016, filed.(mcodina, 7) (Entered: 10/07/2016)
10/05/2016	51	RETURN of Service of SUMMONS Executed as to Amy Brunsting served on 8/30/2016, answer due 9/20/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/05/2016	52	RETURN of Service of SUMMONS Executed as to Stephen A. Mendel served on 9/2/2016, answer due 9/23/2016, filed. (mcodina, 7) (Entered: 10/07/2016)
10/06/2016	44	CERTIFICATE OF INTERESTED PARTIES by Neal Spielman,

		filed.(Schexnayder, Martin) (Entered: 10/06/2016)
10/06/2016	45	RESPONSE to 30 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 35 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Candace Louise Curtis. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Curtis, Candace) (Entered: 10/06/2016)
10/06/2016	46	CERTIFICATE OF INTERESTED PARTIES by Jill Williard Young, filed.(Schaefer, Rafe) (Entered: 10/06/2016)
10/07/2016	47	Unopposed MOTION for Leave to File Motion to Dismiss In Excess of Page Limit by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. Motion Docket Date 10/28/2016. (Attachments: # 1 Proposed Order)(Hedge, Laura) (Entered: 10/07/2016)
10/07/2016	53	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. Motion Docket Date 10/28/2016. (Hedge, Laura) (Entered: 10/07/2016)
10/07/2016	54	MOTION for Leave to File Motion To Dismiss In Excess of Page Limit(Motion Docket Date 10/28/2016.), Unopposed AMENDED 47 MOTION by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed. (Attachments: # 1 Proposed Order)(Hedge, Laura) (Entered: 10/07/2016)
10/11/2016	55	REPLY in Support of 25 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Jill Williard Young. (Schaefer, Rafe) (Entered: 10/11/2016)
10/11/2016	61	MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969 by Candace Louise Curtis, filed. Motion Docket Date 11/1/2016. (Attachments: # 1 Proposed Order)(jengonzalez, 7) (Entered: 10/14/2016)
10/12/2016	56	CERTIFICATE OF INTERESTED PARTIES by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock, filed.(Hedge, Laura) (Entered: 10/12/2016)
10/13/2016	57	RESPONSE to 53 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit)(Munson, Rik) (Entered: 10/13/2016)

10/13/2016	58	PROPOSED ORDER re: 57 Response to Motion, filed.(Munson, Rik) (Entered: 10/13/2016)
10/13/2016	59	MOTION to Stay *Rule 26(f) Conference and All Discovery Pending Resplution of Motions to Dismiss* by Candace Kunz-Freed, Albert Vacek, Jr, filed. Motion Docket Date 11/3/2016. (Reed, Cory) (Entered: 10/13/2016)
10/14/2016	60	JOINDER in 38 MOTION to Strike 26 Memorandum,, , filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Attachments: # 1 Proposed Order)(Hedge, Laura) (Entered: 10/14/2016)
10/14/2016	62	RESPONSE to 36 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - *Rule 12(b)(6)* filed by Candace Louise Curtis. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit) (Munson, Rik) (Entered: 10/14/2016)
10/17/2016	63	REPLY to Response to 53 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Hedge, Laura) (Entered: 10/17/2016)
10/18/2016	64	ORDER granting 47 Motion for Leave to File; granting 54 Motion for Leave to File.(Signed by Judge Alfred H Bennett) Parties notified.(jdav, 4) (Entered: 10/18/2016)
10/18/2016	65	RESPONSE to 38 MOTION to Strike 26 Memorandum,, filed by Rik Wayne Munson. (Attachments: # 1 Exhibit)(Munson, Rik) (Entered: 10/18/2016)
10/18/2016	66	REPORT of Rule 26(f) Planning Meeting by Rik Wayne Munson, filed.(Munson, Rik) (Entered: 10/18/2016)
10/19/2016	67	OBJECTIONS to 66 Report of Rule 26(f) Planning Meeting , filed by Bobbie Bayless, Toni Biamonte, Anita Brunsting, Christine Riddle Butts, Clarinda Comstock, Bradley Featherston, Candace Kunz-Freed, Stephen A. Mendel, Neal Spielman, Albert Vacek, Jr, Jill Williard Young. (Schaefer, Rafe) (Entered: 10/19/2016)
10/21/2016	68	Unopposed MOTION to Substitute Attorney Adraon D. Greene in place of Stephen A. Mendel by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 11/14/2016. (Attachments: # 1 Proposed Order)(Greene, Adraon) (Entered: 10/21/2016)

10/24/2016	69	RESPONSE to 40 MOTION to Dismiss *based on lack of subject matter jurisdiction*, 39 MOTION to Dismiss filed by Rik Wayne Munson. (Munson, Rik) (Entered: 10/24/2016)
10/25/2016	70	RESPONSE in Opposition to 61 MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969, 43 MOTION to Consolidate Lead Case No. 4:12-cv-0592 and Member Case No. 4:16-cv-01969, filed by Jill Williard Young. (Schaefer, Rafe) (Entered: 10/25/2016)
10/27/2016	71	MOTION for Joinder as to 38 MOTION to Strike 26 Memorandum,, by Bradley Featherston, Stephen A. Mendel, filed. Motion Docket Date 11/17/2016. (Deiss, David) (Entered: 10/27/2016)
10/27/2016	72	MOTION for Sanctions by Jill Williard Young, filed. Motion Docket Date 11/17/2016. (Attachments: # 1 Proposed Order) (Schaefer, Rafe) (Entered: 10/27/2016)
10/28/2016	73	RETURN of Service of SUMMONS Executed as to Bradley Featherston served on 10/18/2016, answer due 11/8/2016, filed. (ckrus, 4) (Entered: 10/28/2016)
10/28/2016	74	RETURN of Service of SUMMONS Executed as to Bernard Lyle Matthews, III served on 10/18/2016, answer due 11/8/2016, filed. (ckrus, 4) (Entered: 10/28/2016)
10/28/2016	75	RETURN of Service of SUMMONS Executed as to Darlene Payne Smith served on 10/20/2016, answer due 11/10/2016, filed. (ckrus, 4) (Entered: 10/28/2016)
10/28/2016		Minute Entry for proceedings held before Judge Alfred H Bennett. SCHEDULING CONFERENCE held on 10/28/2016. Motion hearing set for December 12, 2016 at 10:00 AM Appearances:Bob Harrell, Eron Reid, Zander Foley. Bobbie G Bayless, Laura Beckman Hedge, Stephen A Mendel, Adraon DelJohn Greene, Cory S Reed.(Court Reporter: H. Alcarez), filed.(ledwards, 4) (Entered: 10/28/2016)
10/28/2016	76	NOTICE of Setting as to 25 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 40 MOTION to Dismiss *based on lack of subject matter jurisdiction*, 36 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - *Rule 12(b)(6)*, 28 MOTION, 30 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 20 MOTION to Dismiss *For Lack of*

		Subject Matter Jurisdiction, 35 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 23 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 39 MOTION to Dismiss , 19 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Parties notified. Motion Hearing set for 12/9/2016 at 10:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 10/28/2016)
10/28/2016	77	CORRECTED NOTICE of Setting as to 25 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 40 MOTION to Dismiss *based on lack of subject matter jurisdiction*, 30 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 20 MOTION to Dismiss *For Lack of Subject Matter Jurisdiction*, 53 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 35 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, 23 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 39 MOTION to Dismiss , 19 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Parties notified. Motion Hearing set for 12/12/2016 at 10:00 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 10/28/2016)
10/31/2016	78	First MOTION to Dismiss *Complaint* by Jason Ostrom, filed. Motion Docket Date 11/21/2016. (Attachments: # 1 Proposed Order Order Granting Jason Ostrom's Motion o Dismiss Complaint)(Ostrom, Jason) (Entered: 10/31/2016)
10/31/2016	79	RESPONSE to 61 MOTION to Consolidate Lead Case No. 4:12-cv-592 and Member Case No. 4:16-cv-1969 filed by Toni Biamonte, Christine Riddle Butts, Clarinda Comstock. (Attachments: # 1 Proposed Order)(Hedge, Laura) (Entered: 10/31/2016)
10/31/2016	80	ORDER granting 68 Motion to Substitute Counsel for Stephen A. Mendel and Bradley E. Featherson. Attorney Stephen A Mendel terminated. (Signed by Judge Alfred H Bennett) Parties notified. (rosaldana, 4) (Entered: 11/02/2016)
11/02/2016	81	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Bernard Lyle Matthews, III, filed. Motion Docket Date 11/23/2016. (Mathews, Bernard) (Entered: 11/02/2016)
11/04/2016	82	NOTICE of Setting. Parties notified. Motion Hearing set for 12/15/2016 at 11:00 AM in Courtroom 8C before Judge Alfred H

		Bennett, filed. (ledwards, 4) (Entered: 11/04/2016)
11/07/2016	83	First MOTION to Dismiss *Complaint* by Gregory Lester, filed. Motion Docket Date 11/28/2016. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Proposed Order Proposed Order)(Ostrom, Jason) (Entered: 11/07/2016)
11/10/2016	84	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Darlene Payne Smith, filed. Motion Docket Date 12/1/2016. (Attachments: # 1 Proposed Order Order)(Abrams, Barry) (Entered: 11/10/2016)
11/18/2016	85	RESPONSE to 78 First MOTION to Dismiss *Complaint* filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Proposed Order)(Munson, Rik) (Entered: 11/18/2016)
11/23/2016	86	RESPONSE to 81 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Proposed Order)(Munson, Rik) (Entered: 11/23/2016)
11/27/2016	87	RESPONSE to 83 First MOTION to Dismiss *Complaint* filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Proposed Order)(Munson, Rik) (Entered: 11/27/2016)
11/30/2016	88	NOTICE of Resetting. Parties notified. Motion Hearing set for 12/15/2016 at 11:30 AM in Courtroom 8C before Judge Alfred H Bennett, filed. (ledwards, 4) (Entered: 11/30/2016)
12/01/2016	89	RESPONSE to 84 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Rik Wayne Munson. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit Exhibits redacted, # 11 Exhibit, # 12 Proposed Order)(Munson, Rik) (Entered: 12/01/2016)
12/13/2016	90	REPLY to Response to 84 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , filed by Darlene Payne Smith. (Abrams, Barry) (Entered: 12/13/2016)
12/15/2016		Minute Entry for proceedings held before Judge Alfred H Bennett. MOTION HEARING held on 12/15/2016. Motions taken under advisement Appearances:Zander Foley, Amy

		Brunsting, Bob Harrell, Anita Brunsting, Adron Green, Erin Reed, Rick Musuin. Bobbie G Bayless, Laura Beckman Hedge, Adraon DelJohn Greene, Cory S Reed, Bernard Lilse Mathews, III, Jason B Ostrom, Barry Abrams, Martin Samuel Schexnayder, Rafe A Schaefer.(Court Reporter: K. Metzger), filed.(ledwards, 4) (Entered: 12/15/2016)
05/16/2017	91	ORDER granting 35 Motion to Dismiss for Failure to State a Claim; granting 36 Motion to Dismiss for Failure to State a Claim; granting 39 Motion to Dismiss; granting 40 Motion to Dismiss; denying as moot 43 Motion to Consolidate Cases; granting 53 Motion to Dismiss for Failure to State a Claim; denying as moot 61 Motion to Consolidate Cases; denying 72 Motion for Sanctions; granting 78 Motion to Dismiss; granting 81 Motion to Dismiss for Failure to State a Claim; granting 83 Motion to Dismiss; granting 84 Motion to Dismiss for Failure to State a Claim; granting 19 Motion to Dismiss for Failure to State a Claim; granting 20 Motion to Dismiss; granting 23 Motion to Dismiss for Failure to State a Claim; granting 25 Motion to Dismiss for Failure to State a Claim; granting 30 Motion to Dismiss for Failure to State a Claim.(Signed by Judge Alfred H Bennett) Parties notified.(ledwards, 4) (Entered: 05/16/2017)
05/26/2017	92	NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Candace Louise Curtis, Rik Wayne Munson, filed. (olindor, 4) (Entered: 05/26/2017)
05/26/2017		Confirmation of receipt of payment from Rick Munson, Candace Luis Curtis in the amount of $ 505 Receipt date: 5/26/2017. Receipt number HOU72706. Purpose Description: Notice of Appeal. (olindor, 4) (Entered: 05/26/2017)

READ INSTRUCTIONS ON PAGE TWO BEFORE COMPLETING

TRANSCRIPT ORDER FORM

District Court: Southern District of Texas District Court Docket No. 4:16-cv-1969

Short Case Title: Curtis et al., v Kunz-Freed et al., Court Reporter: Heather Alcaraz

ONLY ONE COURT REPORTER PER FORM

Date Notice of Appeal Filed by Clerk of District Court: 05/30/2017 Court of Appeals No.: 17-20360

PART I. (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made.)

A. Complete the Following:

☐No Hearings ☐Transcript is unnecessary for appeal purposes ☐Transcript is already on file in the Clerk's Office

or

Check All of the Following that Apply, Enter the date of the proceeding in the blank line.

This is to Order a Transcript of the following proceedings: ☐Bail Hearing: _____ ☐Voir Dire:_____

☐Opening Statement of Plaintiff:_____ ☐Opening Statement of Defendant:_____

☐Closing Argument of Plaintiff:_____ ☐Closing Argument of Defendant:_____

☐Opinion of court:_____ ☐Jury Instructions:_____ ☐Sentencing:_____

Hearing Date(s)	Proceeding	Judge/Magistrate
10/28/2016	Rule 26(f) Conference	Hon. Alfred H. Bennett

Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for DISMISSAL OF APPEAL.

B. This is to certify that satisfactory financial arrangements have been completed with the court reporter for payment of the transcript. The method of payment will be:

■Private Funds; ☐Criminal Justice Act Funds (**Enter Authorization-24 to USDC eVoucher**);

☐Other IFP Funds; ☐Advance Payment waived by reporter; ☐U.S. Government Funds

☐Other Check mailed 6/2/2017

Signature_____ Date Transcript Ordered 6/2/2017

Print Name Rik Munson Phone: 925-349-8348

~~Counsel for~~ Pro se

Address 218 Landana St. American Canyon CA 94503

PART II. COURT REPORTER ACKNOWLEDGEMENT (To be completed by the Court Reporter and filed with the Court of Appeals within 7 days after receipt. Read instructions on page 2 before completing.)

Date Transcript Order Received	If arrangements not yet made, date contact made w/ ordering party	Estimated Completion Date	Estimated number of Pages

☐Satisfactory Arrangements for payment were made on _____

☐ Payment Arrangements have NOT been made. Reason: ☐Deposit not received ☐Unable to contact ordering party

☐Other (Specify)_____

Date:_____ Signature of Reporter:_____ Tel._____

Address of Reporter:_____

Part III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT (To be completed by court reporter on date of filing transcript in the District Court and this completed form e-filed with the Court of Appeals.)

This is to certify that the transcript has been completed and filed at the District Court today.

Actual Number of Pages: _____ Actual Number of Volumes:_____

Date: _____ Signature of Reporter:_____

READ INSTRUCTIONS ON PAGE TWO BEFORE COMPLETING

TRANSCRIPT ORDER FORM

District Court: Southern District of Texas District Court Docket No. 4:16-cv-1969

Short Case Title: Curtis et al., v Kunz-Freed et al., Court Reporter: Kathy Metzger

ONLY ONE COURT REPORTER PER FORM

Date Notice of Appeal Filed by Clerk of District Court: 05/30/2017 Court of Appeals No.: 17-20360

PART I. (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made.)

A. Complete the Following:

☐No Hearings ☐Transcript is unnecessary for appeal purposes ☐Transcript is already on file in the Clerk's Office

or

Check All of the Following that Apply, Enter the date of the proceeding in the blank line.

This is to Order a Transcript of the following proceedings: ☐Bail Hearing: _____ ☐Voir Dire:_____

☐Opening Statement of Plaintiff:_____ ☐Opening Statement of Defendant:_____

☐Closing Argument of Plaintiff:_____ ☐Closing Argument of Defendant:_____

☐Opinion of court:_____ ☐Jury Instructions:_____ ☐Sentencing:_____

Hearing Date(s)	Proceeding	Judge/Magistrate
12/15/2017	Hearing on Motions to Dismiss	Hon. Alfred H. Bennett

Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for DISMISSAL OF APPEAL.

B. This is to certify that satisfactory financial arrangements have been completed with the court reporter for payment of the transcript. The method of payment will be:

■Private Funds; ☐Criminal Justice Act Funds (**Enter Authorization-24 to USDC eVoucher**);

☐Other IFP Funds; ☐Advance Payment waived by reporter; ☐U.S. Government Funds

☐Other_____

Signature_____ Date Transcript Ordered 5/23/2017

Print Name Rik Munson Phone: 925-349-8348

~~Counsel for~~ Pro se

Address 218 Landana St. American Canyon CA 94503

PART II. COURT REPORTER ACKNOWLEDGEMENT (To be completed by the Court Reporter and filed with the Court of Appeals within 7 days after receipt. Read instructions on page 2 before completing.)

Date Transcript Order Received	If arrangements not yet made, date contact made w/ ordering party	Estimated Completion Date	Estimated number of Pages

☐Satisfactory Arrangements for payment were made on _____

☐ Payment Arrangements have NOT been made. Reason: ☐Deposit not received ☐Unable to contact ordering party

☐Other (Specify)_____

Date:_____ Signature of Reporter:_____ Tel._____

Address of Reporter:_____

Part III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT (To be completed by court reporter on date of filing transcript in the District Court and this completed form e-filed with the Court of Appeals.)

This is to certify that the transcript has been completed and filed at the District Court today.

Actual Number of Pages: _____ Actual Number of Volumes:_____

Date: _____ Signature of Reporter:_____

TRANSCRIPT ORDER FORM INSTRUCTIONS

INSTRUCTIONS FOR ANYONE FILING A NOTICE OF APPEAL

1. Complete Part 1. (Whether or not transcript is ordered)
2. Contact each court reporter involved in reporting the proceedings to make arrangements for payment. (A separate transcript order must be completed for each court reporter.)
3. Send a copy of the form to the court reporter. (via email or mail, ask court reporter) CJA Counsel must also enter an Authorization-24 in the U. S. District Court's eVoucher System.
4. File a copy with the U.S. Court of Appeals for the Fifth Circuit (Attorneys must e-file. Pro Se filers must mail form unless authorized to e-file.)
5. File a copy with the District Court.
6. Send a copy(ies) to appellee(s).
7. Retain a copy for your files.

SHOULD SATISFACTORY ARRANGEMENTS FOR TRANSCRIPT PRODUCTION, INCLUDING NECESSARY FINANCIAL ARRANGEMENTS, NOT BE MADE WITHIN TEN (10) DAYS AFTER FILING YOUR NOTICE OF APPEAL, YOU APPEAL CAN BE DISMISSED.

INSTRUCTIONS TO COURT REPORTER

This is an electronic version of the original 8-page multipart carbon-less form. The court reporter is responsible for ensuring that the correct number of copies are made to meet the distribution requirements.

To assure the Court of Appeals that the ordering party has fulfilled his or her obligations under FRAP 10(b), for ordering and making adequate financial arrangements with the court reporter, you are requested to complete Part II and file with the Court of Appeals within seven (7) days after receipt.

It is the appellant's responsibility to contact you and make financial arrangements before filling out the form. However, if financial arrangements have not been made within ten (10) days after receipt of transcript order, complete Part II and file with the Court of Appeals. If financial negotiations with the ordering party are still in progress when the 10 days expire, and the chances for completion within a short period of time appears to be good, contact a Deputy Clerk for additional time to complete this form. Link to contact information: Contact Clerk's Office About My Case or call:
NORTHERN AND WESTERN TEXAS CASE TEAM: 504-310-7806
SOUTHERN AND EASTERN TEXAS CASE TEAM: 504-310-7807
LOUISIANA, MISSISSIPPI, & AGENCY CASE TEAM: 504-310-7808

If financial arrangements are made after you send the acknowledgement form to the Court of Appeals, immediately notify the Court in writing of the fact, furnishing the estimated delivery date.

THE JUDICIAL COUNCIL'S 60-DAY DISCOUNT DATE BEGINS TO RUN FROM THE DATE SATISFACTORY FINANCIAL ARRANGEMENTS HAVE BEEN MADE.

WRITTEN REQUEST FOR EXTENSION OF TIME WITH EXPLANATION OF CIRCUMSTANCES AND A REQUEST FOR WAIVER OF DISCOUNT MUST BE ADDRESSED TO THE CLERK OF THE CIRCUIT COURT FOR ANY TRANSCRIPTS WHICH CANNOT BE COMPLETED WITHIN 60 DAYS.

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

Candace Louise Curtis, et al.

Plaintiff,

v.

Case No.: 4:16−cv−01969
Judge Alfred H Bennett

Candace Kunz−Freed, et al.

Defendant.

Official Transcript Filed

An official transcript has been filed. It may contain information protected from public disclosure by law. *See* E−Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

Ninety days after a transcript has been filed, it will be electronically available to the public on PACER. To comply with the rules on privacy, the parties must redact protected information before it is available on PACER.

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- Year of a person's birth;
- Initials of a minor's name;
- Last four digits of an account number; and
- City and state of a home address in criminal cases.

Additional redactions require a separate motion and court approval.

A party may view the transcript at the public terminals in the clerk's office or buy it through www.txs.uscourts.gov or by calling (713) 250−5500 . A party is only responsible for reviewing the:

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- Statements by his party;
- Testimony of witnesses called by his party; and
- Other parts ordered by the court.

Redaction is your responsibility. The court, clerk, court reporter, or transcriber will not review this transcript for compliance.

David J. Bradley, Clerk

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

Candace Louise Curtis, et al.

Plaintiff,

v.

Case No.: 4:16−cv−01969
Judge Alfred H Bennett

Candace Kunz−Freed, et al.

Defendant.

Official Transcript Filed

An official transcript has been filed. It may contain information protected from public disclosure by law. *See* E−Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

Ninety days after a transcript has been filed, it will be electronically available to the public on PACER. To comply with the rules on privacy, the parties must redact protected information before it is available on PACER.

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David J. Bradley, Clerk

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

CANDACE LOUISE CURTIS AND RIK WAYNE MUNSON, Plaintiffs,	
VS.	CIVIL ACTION NO. 4:16-CV-1969
CANDACE KUNZ-FREED, ET AL., Defendants.	8:59 A.M.

INITIAL CONFERENCE
BEFORE THE HONORABLE ALFRED H. BENNETT
OCTOBER 28, 2016

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer.

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08:50:02 *(Call to Order of the Court.)*

08:59:34 **THE COURT:** Good morning. Thank you. Please have a seat.

09:00:53 Cause number 16-CV-1969, *Candace Curtis versus -- et al., versus Candace Freed, et al.* Come on up.

09:01:09 You can stay there. I can hear your -- there's a microphone there for you.

09:01:15 All right. Counsel, please announce your appearances for the record.

09:01:21 **MR. HARRELL:** Bob Harrell representing Jill Young.

09:01:23 **MS. HEDGE:** Good morning, Your Honor. Laura Beckman Hedge. I represent the Honorable Judge Christine Riddle Butts, Judge Clarinda Comstock and Toni Biamonte.

09:01:36 **MS. FOLEY:** Your Honor, Zandra Foley and Cory Reed. We represent Candace Kunz-Freed, Al Vacek and Vacek & Freed.

09:01:41 **THE COURT:** Who's Mr. Reed?

09:01:42 **MR. REED:** Your Honor, right here.

09:01:44 **THE COURT:** Very well.

09:01:44 **MS. BAYLESS:** Bobbie Bayless, Your Honor. I'm here on behalf of myself.

09:01:48 **MR. REID:** Your Honor, Eron Reid for Neal Spielman.

09:01:51 **MR. GREENE:** Adraon Greene, Your Honor, for Stephen Mendel and Bradley Featherston.

09:01:57 **MR. MUNSON:** I'm Rik Munson, pro se plaintiff.

09:01:59 **MS. CURTIS:** Candace Curtis, pro se plaintiff.

09:02:03 **THE COURT:** Very well.

09:02:07 Anyone else?

09:02:11 *(No response.)*

09:02:19 **THE COURT:** Are you here on a case I just called? Make your --

09:02:22 **MR. OSTROM:** I am, Your Honor.

09:02:23 **THE COURT:** Make your appearance for the record.

09:02:23 **MR. OSTROM:** Jason Ostrom representing Jason Ostrom, pro se.

09:02:26 **THE COURT:** Very well.

09:02:31 This is your initial conference. Give me the status of the case in 90 seconds from your version.

09:02:41 **MR. MUNSON:** Well, we filed a RICO complaint alleging a number of predicate acts and aiding and abetting, and we are here today for a status conference. We did not -- somehow didn't manage to get together on the Rule 26(f). It wasn't for lack of some of us trying.

09:02:56 So we're here for status for -- for docket control order, and there are pending motions, motions to dismiss, motions to strike, motions for consolidation.

09:03:06 **THE COURT:** On the motions to dismiss, have you responded to each and every one?

09:03:10 **MR. MUNSON:** Yes, I have. All the ones that have been filed, I have responded to.

09:03:13 **THE COURT:** Okay. So they're ripe.

09:03:15 Ma'am, anything from you?

09:03:18 **MS. CURTIS:** No.

09:03:18 **THE COURT:** Very well.

09:03:19 Mr. Harrell, let's start with you.

09:03:22 **MR. HARRELL:** Judge, so yes, we have filed motions to dismiss. I think all of us feel very strongly that this case should be dismissed. We've also filed a motion for stay, and we would ask the Court to stay the expenditure of more money on this case until we know we have a real case here. And in our motions to dismiss, we've shown that there's jurisdictional issues under RICO and also that this case is just -- it is clearly a frivolous case.

09:03:56 I won't re-argue our motions here, but I think all of us feel very strongly that this is not the typical motion to dismiss that everybody just files. We feel very seriously that these are motions to dismiss that should be granted to put an end to this.

09:04:13 **THE COURT:** I believe I was told that there are approximately 12, 11 motions to dismiss. How many?

09:04:23 **MR. HARRELL:** Yes, Your Honor.

09:04:24 **THE COURT:** Are they ripe, ready to go from --

09:04:27 **MR. HARRELL:** I believe so.

09:04:28 **THE COURT:** All right. Ms. Hedge, anything from you?

09:04:31 **MS. HEDGE:** I don't have anything to add, Your Honor.

09:04:33 **THE COURT:** All right. Anyone else?

09:04:34 *(No response.)*

09:04:35 **THE COURT:** All right. Oh, you said a motion to stay. Why is it necessary at this point to enter a motion to stay?

09:04:47 **MR. HARRELL:** Judge, we think it's -- we think that is the best way to do things because we feel confident that the Court will dismiss this case.

09:04:59 **THE COURT:** Well, what currently is happening that you're seeking a stay from? Is there ongoing discovery that you're seeking a stay from?

09:05:06 **MR. HARRELL:** There's no ongoing discovery. We would just ask that discovery not start, and so -- I guess that's really what we're asking is before we get into discovery, let's determine whether this Court has jurisdiction and whether this case should survive the motions to dismiss.

09:05:27 **THE COURT:** So there is nothing that you're -- you just want a stay in general. There's nothing that you're currently specifically seeking a stay from, such as discovery or anything like that?

09:05:37 **MR. HARRELL:** That's correct, Your Honor.

09:05:38 **THE COURT:** Very well.

09:05:45 Well, if the motions to dismiss are ripe, it seems that the most logical thing to do, before we get too far down the road in this case, is to get those sorted out.

09:06:02 **MR. MUNSON:** I agree.

09:06:02 **THE COURT:** And so I'm not prepared to hear all these

motions to dismiss this morning and a response, so I think it probably would be appropriate to set a date to do so, and then have everyone come back when I can devote a significant amount of time to hearing everyone out and, obviously, hearing your response.

09:06:26 Other than that, is there anything else that we think that we need to take care of today, sir?

09:06:32 **MR. MUNSON:** We need a docket control order, but they don't want to have one, apparently.

09:06:37 **THE COURT:** Well, I tell you what. Why don't we do it this way: Why don't we set a date certain for the motions to dismiss --

09:06:45 **MR. MUNSON:** Okay.

09:06:45 **THE COURT:** -- and in the event that the motions to dismiss are denied, then we can have a docket control order entered at the conclusion of that hearing.

09:06:59 **MR. MUNSON:** That's fine.

09:07:00 **THE COURT:** All right.

09:07:01 **MR. MUNSON:** I think that's fine.

09:07:01 **THE COURT:** All right. How soon can we get back? Can we do this sometime next month?

09:07:09 **MR. HARRELL:** Yes, Your Honor. The way we look at it, the sooner the better, Judge.

09:07:13 **MR. MUNSON:** We just need time to get a rate on transportation. We just need time to get a rate on

transportation. If we book too short, it costs a lot of money more.

09:07:21 **THE COURT:** Yeah. That was my next question. Where are you coming in from?

09:07:25 **MR. MUNSON:** The Bay Area, California.

09:07:27 **THE COURT:** Okay. All right. What -- what type of time lead do you need?

09:07:36 **MS. CURTIS:** Three weeks, 21 days -- 21 days.

09:07:39 **THE COURT:** So 30 days out would be good?

09:07:41 **MR. MUNSON:** That's fine.

09:07:41 **THE COURT:** All right. Let's find -- yes, sir?

09:07:46 **MR. MUNSON:** There's also motions to dismiss due November 7th or answers. One of the other. So I don't know if that's a consideration or not.

09:07:53 **THE COURT:** Well, yeah, because I want to try to get it all in one swoop.

09:07:56 **MR. MUNSON:** Okay. So they should probably answer those first.

09:07:58 Well, they're due to answer or move to dismiss by the 7th.

09:08:02 **THE COURT:** Hold on. I'm -- they filed a motion to dismiss. Is there a response due November the 7th?

09:08:08 **MS. CURTIS:** No, there is a motion -- there is a motion to dismiss or an answer due on the 7th.

09:08:12 **THE COURT:** Oh, I see. Someone hadn't answered as of

yet?

09:08:15 **MR. MUNSON:** That's correct.

09:08:16 **THE COURT:** I would assume they didn't make their appearance this morning. Is that correct?

09:08:20 **MS. CURTIS:** I believe that's right, Your Honor. They have not made their appearances.

09:08:26 **THE COURT:** But they have been properly served?

09:08:32 **MR. MUNSON:** Yes. They asked for --

09:08:33 **THE COURT:** An extension?

09:08:34 **MR. MUNSON:** Yes, and we didn't oppose it.

09:08:38 **THE COURT:** All right. Well, I really don't want to hold up everybody for that because if they answer and then file a motion to dismiss, we might be looking at, you know, early next year, and I -- let's --

09:08:52 **MR. MUNSON:** Let's do it first.

09:08:53 **THE COURT:** -- let's do this. And -- all right. Look at your calendars. December the 9th, 10:00 a.m.

09:09:11 **MR. MUNSON:** This room?

09:09:11 **THE COURT:** Yes, sir, this courtroom.

09:09:13 **MR. MUNSON:** Thank you.

09:09:13 **THE COURT:** December the 9th, 10:00 a.m. Does it work for everybody?

09:09:22 *(No response.)*

09:09:22 **THE COURT:** All right. Hearing no objection, December the 9th, 10:00 a.m., will be the oral hearings on all pending

motions to dismiss with responses filed. And, obviously, if you have not filed a reply to the response, you have plenty of time to get that done.

09:09:44 And given that you've already filed your response, I will assume that there are no discovery issues, especially if we're talking jurisdictional issues and things of that nature.

09:09:53 Sir, ma'am, anything else?

09:09:55 *(No response.)*

09:09:58 **THE COURT:** Are you an attorney?

09:09:59 **MR. MUNSON:** No, sir.

09:10:00 **THE COURT:** Are you an attorney?

09:10:01 **MS. CURTIS:** No, sir.

09:10:06 **THE COURT:** I don't want to call it a word of -- well, it's a word of caution. You have the right to represent yourself, and as you look across the room, you see a table full of attorneys. While you have the right to represent yourself, and there is some leniency in regards to making sure you adhere to the rules of procedure and evidence, you are obligated to educate yourselves on the proper procedure and rules for not only pleadings, but argument in this case.

09:10:45 I have, on my website, some do's and dont's, so please go take a look at that. If for any reason you have any questions, call Ms. Edwards, who is my case manager, ahead of time, and we will be happy to provide you any information that you need such that you can come in and effectively participate

in the proceedings as pro se plaintiffs. Understood?

09:11:12 **MR. MUNSON:** I understand that. Thank you very much.

09:11:13 **THE COURT:** Yes, sir.

09:11:13 Ma'am, anything else --

09:11:15 **MS. CURTIS:** I understand.

09:11:15 **THE COURT:** -- from you?

09:11:16 **MS. CURTIS:** No.

09:11:16 **THE COURT:** Very well.

09:11:17 Counsel, anything else?

09:11:19 **ALL DEFENSE COUNSEL:** No, Your Honor.

09:11:21 **THE COURT:** Have a good weekend. You're excused.

09:12:04 Ms. Hedge, you'll have to just take one of the attorney ready rooms and keep it for yourself.

09:12:09 **MS. HEDGE:** I know, Your Honor. Bring a pillow and a blanket.

09:12:12 **THE COURT:** That's right.

09:12:12 *(Proceedings concluded at 9:12 a.m.)*

-o0o-

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

Date: July 5, 2017

/s/ Heather Alcaraz
Signature of Court Reporter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS, ET AL . C.A. NO. H-16-1969
. HOUSTON, TEXAS
VS. .
. DECEMBER 15, 2016
CANDACE KUNZ-FREED, et al . 11:50 A.M. to 1:00 P.M.

TRANSCRIPT of MOTION HEARING
BEFORE THE HONORABLE ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

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P R O C E E D I N G S

THE COURT: Cause No. 16-cv-1969, Candace Curtis, et al, versus Candace Freed, et al. Come on up.

We have a third table over here as well, with a microphone, so, please.

UNIDENTIFIED SPEAKER: This one over here?

THE COURT: Yes. And given the size, I do not mind if you take a seat on this side of the table with your back to me, I understand. I'm not going to be offended, I understand.

Having called Cause No. 16-cv-1969, I'm now going to take the appearance of counsel, starting from my right.

MR. ABRAMS: Good morning, Your Honor. Barry Abrams for the defendant Darlene Payne Smith.

MS. BAYLESS: Bobbie Bayless on my own behalf.

MR. HARRELL: Bob Harrell and Rafe Schaefer on behalf of Jill Young.

THE COURT: Wait. I didn't hear the name.

MR. HARRELL: Jill Young.

THE COURT: Very well.

MS. BECKMAN HEDGE: Hello, Your Honor. Laura Beckman Hedge. I'm here on behalf of Judge Christine Riddle Butts, Judge Clarinda Comstock and Toni Biamonte.

THE COURT: Very well.

MS. CURTIS: Candace Curtis here --

THE COURT: Use the microphone so that --

MS. CURTIS: Candace Curtis on behalf of myself.

THE COURT: Very well.

MR. MUNSON: My name is Rik Munson. I'm a private attorney general plaintiff, pro se.

THE COURT: Very well.

MR. REID: Eron Reid on behalf of Neal Spielman.

THE COURT: I'm sorry, on behalf of?

MR. REID: Neal Spielman.

THE COURT: Counsel?

MR. GREENE: Adraon Greene, Your Honor, on behalf of Stephen Mendel and Bradley Featherston.

THE COURT: Counsel? Oh, right here.

MR. SPIELMAN: Oh, Your Honor, I'm just -- I'm the client -- or the defendant, Neal Spielman.

THE COURT: Oh, very well.

UNIDENTIFIED SPEAKER: I'm likewise a client of Mr. Greene.

THE COURT: Very well.

MR. REED: Cory Reed on behalf of Candace Freed and Al Vacek.

MS. FOLEY: Zandra Foley on behalf of Candace Freed and Al Vacek.

MR. MATHEWS: Bernard Mathews. I'm representing myself, Your Honor.

MR. OSTROM: Your Honor, Jason Ostrom on behalf of my

myself and Gregory Lester.

THE COURT: You said on behalf of yourself?

MR. OSTROM: Myself and Gregory Lester.

THE COURT: Are you an attorney?

MR. OSTROM: I am.

THE COURT: Very well.

MS. ANITA BRUNSTING: Anita Brunsting on behalf of myself.

THE COURT: Very well.

MS. AMY BRUNSTING: Amy Brunsting on behalf of myself.

THE COURT: Very well.

Counsel, for today's hearing there are a number of motions to dismiss and I'm going to call them out, hopefully, and I won't miss them. Defendants Candace Freed and Albert Vacek's motion to dismiss for failure to state a claim.

MS. FOLEY: Yes, Your Honor.

THE COURT: Defendants Candace Freed and Albert Vacek's motion to dismiss for lack of subject matter jurisdiction.

MS. FOLEY: I just said yes, Your Honor.

THE COURT REPORTER: Can you state your name?

THE COURT: Oh, state your name.

MS. FOLEY: Zandra Foley.

THE COURT: Yes, when you speak, state your name again. With this cast of Spartacus before us, the court

reporter will greatly appreciate the assist.

Bobbie Bayless's motion to dismiss for failure to state a claim.

MS. BAYLESS: Bobbie Bayless, yes, Your Honor.

THE COURT: Defendant Brunsting's motion for access to electronic filing. Is that in this?

UNIDENTIFIED SPEAKER: Which one?

THE COURT: Oh, Anita.

MS. ANITA BRUNSTING: Yes.

THE COURT: Is that on today's docket?

MS. ANITA BRUNSTING: I believe that was approved.

THE COURT: Okay. Defendant Jill Willard Young's 12(b)(6) motion to dismiss.

MR. HARRELL: Bob Harrell. Yes.

THE COURT: Defendant Anita Brunsting's Rule 12(b)(6) motion to dismiss for plaintiffs' failure to state a claim.

MS. ANITA BRUNSTING: Yes.

THE COURT: And you are?

MS. ANITA BRUNSTING: I'm Anita Brunsting.

THE COURT: Very well.

Defendant Amy Brunsting's Rule 12(b)(6) motion to dismiss for plaintiffs' failure to state a claim.

MS. AMY BRUNSTING: Amy Brunsting. Yes, Your Honor.

THE COURT: Defendants Mendel and Featherston's Rule 12(b)(6) motion to dismiss for plaintiffs' failure to state a

claim.

MR. GREENE: Adraon Greene. Yes, Your Honor.

THE COURT: Defendant Jill Willard Young's motion to strike plaintiffs' addendum and memorandum in support of RICO complaint.

MR. HARRELL: Bob Harrell. Yes, Your Honor.

THE COURT: And that's on today's --

MR. HARRELL: It's part of the motion to dismiss, so, yes, Your Honor.

THE COURT: Very well.

Defendant Neal Spielman's motion to dismiss.

MR. REID: Eron Reid. Yes, Your Honor.

THE COURT: And there was also Defendant Neal Spielman's motion to dismiss based on lack of subject matter jurisdiction.

MR. REID: Eron Reid. Yes, Your Honor.

THE COURT: I also have in my folder plaintiffs' motion for consolidation of related cases pursuant to 28 U.S.C. Section 1367, Rule 42(a) of the Federal Rules of Civil Procedure and Local Rule 7.6 with supporting memoranda.

MS. CURTIS: Yes, Your Honor. Candace Curtis.

THE COURT: Defendant Judge Christine Butts, Judge Comstock, et al, motion to dismiss complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6).

MS. BECKMAN HEDGE: Laura Beckman Hedge. Yes, Your

Honor.

THE COURT: Plaintiffs' motion for -- I covered that one.

Defendants Mendel and Featherston's joinder in Jill Willard Young's motion to strike plaintiffs' addendum to memorandum in support of RICO complaint.

MR. GREENE: Adraon Greene. Yes, Your Honor.

THE COURT: And Defendant Jill Willard Young's motion for sanctions.

MR. HARRELL: Bob Harrell. And we filed it. I don't know if it's technically on the docket today but --

THE COURT: For today. Okay. Thank you.

Defendant Jason Ostrom's motion to dismiss complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

MR. OSTROM: Yes, Your Honor. Jason Ostrom.

THE COURT: Motion to dismiss Defendant Bernard Mathews.

MR. MATHEWS: Bernard Mathews. That is correct, Your Honor.

THE COURT: Very well.

And Defendant Gregory Lester's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

MR. OSTROM: Jason Ostrom. Yes, that's correct.

THE COURT: And, finally, Defendant Darlene Payne Smith, motion to dismiss for lack of subject matter

jurisdiction and failure to state a claim.

MR. ABRAMS: Barry Abrams. Yes, Your Honor.

THE COURT: Okay. Did I miss anyone's motion to dismiss?

MS. FOLEY: Your Honor, Zandra Foley. We also had a motion to dismiss for lack of subject matter jurisdiction that was filed separately from the motion to dismiss for failure to state a claim.

THE COURT: Very well.

Anyone else on this side, did I miss your motion that was under consideration for today?

MS. BECKMAN HEDGE: Laura Beckman Hedge, Your Honor. The defendants, Judge Butts, Judge Comstock, and Toni Biamonte joined in the motion that you mentioned earlier that Jill Willard Young filed, striking -- motion to strike plaintiffs' addendum of memorandum in support of RICO complaint.

THE COURT: Very well.

MS. BECKMAN HEDGE: Thank you.

THE COURT: Well, to be most efficient, we have a lot of 12(b)(6) motions, which I assume making similar arguments. There may be individual facts for each defendant. So, why don't we pick someone to present a motion, perhaps the first one that was filed, and then we can move from that and you can tell me if there are specifics, but you do not need to reurge the essence of the legal arguments in the first motion. That

way we can save a little time.

Mr. Harrell, I see you rising to your feet.

MR. HARRELL: Yes, Your Honor. If it please the Court, we're prepared to give an overview of the motions and the law. And if it please the Court, our lawyer, Rafe Schaefer, would like to make that presentation.

THE COURT: All in accord with that? Any objections from any of the defendants? Very well.

MR. SCHAEFER: Thank you, Your Honor. My name is Rafe Schaefer with Norton Rose Fulbright, along with Bob Harrell. We represent Defendant Jill Willard Young, who is in the courtroom here today, who is an attorney with the law firm of MacIntyre, McCulloch, Stanfield and Young here in Houston. She practices probate law.

Plaintiffs in this matter have sued, as you can see, more than 15 defendants who are lawyers, judges, other legal professionals, like court reporters, and other participants in a probate matter who practice in Harris County Probate Court No. 4.

Plaintiffs' claims in their complaint consist of an allegation that the defendants collectively are members of a secret society and what plaintiffs call a cabal that they call Harris County Tomb Raiders Association. They also call it the Harris County Probate Mafia.

Plaintiffs' allegation comes down to a RICO

claim, and plaintiffs allege that the folks in this courtroom are members of a shadow organization that engage in poser advocacy. And plaintiffs appear to say that poser advocacy is the fake practice of law by the attorneys and lawyers -- or the attorneys and judges and court reporters in this room that's designed to, in plaintiffs' words, highjack familiar wealth from decedent's estates in the probate system.

Effectively, Your Honor, the best I can tell, plaintiffs allege that the folks in this room are in this probate mafia and they engage in the fake practice of law in Probate Court No. 4 to generate attorneys' fees, which plaintiffs say defund the estates in the probate court. And that's plaintiffs' theory of the case and theory of how they're entitled to damages.

Against Ms. Young, plaintiffs purport to allege ten causes of action. They allege a RICO cause of action; three claims for honest services fraud; a claim for wire fraud; a claim for fraud under 18 U.S.C. Section 1001; a Hobbs Act claim; and three conspiracy claims.

Now, those claims all fail for three very simple reasons. The first reason they fail is a reason that applies to everyone in this room; and that is, that plaintiffs have simply failed to state a claim on which relief can be granted under Twombly and Iqbal and the plausibility standard of Rule 12, but also just that plaintiffs' complaint itself is

delusional and fanciful and this Court should use its inherent powers to dismiss that complaint.

The second basis and the second reason plaintiffs' complaint should be dismissed also applies to everyone in this room, and it's that plaintiffs have failed to show they have standing to sue for RICO and the other causes of action that they've sued for are criminal causes of action that aren't privately actionable in federal court. And we've cited a lot of case law, that they can't bring it. And so the only claim that they really can bring is the RICO claim, and they've alleged no direct injury that would give them standing to sue.

The third reason why plaintiffs' complaint should be dismissed against Ms. Young is -- particularly Ms. Young and some other folks in here, but Ms. Young is protected by Texas's attorney immunity doctrine, which I'll talk about very briefly, Your Honor. I mentioned plaintiffs' allegations. They appear to relate to a probate matter in Harris County Probate Court No. 4. Plaintiffs call that the Curtis v. Brunsting matter. They don't ever mention a cause number. I think, Your Honor, since they've sued Ms. Young, the only matter Ms. Young was ever involved in that involved plaintiff Curtis is the matter of *In re: Estate of Nelva Brunsting*, which is in Probate Court No. 4.

But Plaintiff Munson wasn't a party to that matter. He wasn't a beneficiary to that estate. He doesn't

have any relationship to Ms. Young. He doesn't appear to have standing to sue at all in this matter.

In the Brunsting matter, Ms. Young, my client, was an attorney for Temporary Administrator Lester, who is also a defendant here today. Temporary Administrator Lester was appointed by Probate Court No. 4 to prepare a single written report. Ms. Young assisted him as his attorney in preparation of that single report, and that's all she did. All of the actions taken by Ms. Young in that probate matter were in her role as attorney to Ms. -- I'm sorry, to Mr. Lester. The plaintiffs don't dispute that. Ms. Young never had a fiduciary relationship with either plaintiff. Plaintiffs don't dispute that.

In fact, nowhere in their entire complaint do plaintiffs allege Ms. Young committed a single wrongful act or did anything other than act as an attorney for Temporary Administrator Lester.

So, I want to go through very briefly, Your Honor, the three bases for dismissal that I mentioned earlier. The first is that plaintiffs' complaint doesn't state a claim for relief. And that's under Twombly and Iqbal, but also just that it's delusional, Your Honor, and that this Court should use its powers to dismiss that. Under Rule 12, as this Court knows, plaintiffs' complaint must be dismissed under Twombly and Iqbal if it's too implausible to state a claim for relief.

This means that the Court should ignore all legal conclusions in the complaint, and it has to look at whether the well-pleaded facts permit the Court to infer more than the mere possibility of misconduct.

Here there is nothing in the complaint but boilerplate legal conclusions, Your Honor. There are no allegations of wrongful acts by Ms. Young. There are no allegations of wrongful acts, you know, pleaded with any sort of specificity that can identify an alleged actual wrongful act by plaintiffs, other than plaintiffs' allegation that there's this probate mafia engaging in poser advocacy, but there's no actual examples of what that is or how that took place.

THE COURT: Is the operative complaint Document No. 1?

MR. SCHAEFER: Yes, Your Honor.

THE COURT: Very well.

MR. SCHAEFER: Other courts in this district have dismissed RICO cases very similar for this exact same reason. There's a matter that we cited to in our motion to dismiss called *Freeman v. Texas*, which is a 2008 case decided by Judge Rosenthal, where Judge Rosenthal dismissed is a complaint alleging a probate court was a RICO enterprise comprised of judges who, quote, conspired against pro se litigants that virtually looted the pro se litigant's homestead through a probate proceeding. And the Court -- Judge Rosenthal held that even if all of those allegations were true, they failed to

state a racketeering activity because plaintiff hadn't alleged sufficient facts to raise a colorable claim that any violation of any of the predicate RICO acts had actually occurred. So, the Court held in light of the absence of any well-pleaded facts sufficient to state a RICO claim, that claim was dismissed.

The same is true here, Your Honor. But in addition to just being implausible on its face, the complaint is frivolous and delusional, and just a facial reading of the complaint shows the Court that that's true. And this Court has inherent authority to dismiss a pro se litigant's frivolous or malicious complaint.

To determine whether a complaint is frivolous or malicious, a court has to look at the complaint and see whether the allegations are clearly baseless, which means the allegations are fanciful, fantastical, or delusional. Here, again, plaintiffs allege that the folks in this courtroom are members of a secret society called the Harris County Tomb Raiders that defraud estates through poser advocacy by all these mafia members -- probate mafia members. Your Honor, these allegations are fanciful and delusional.

I would direct you to a very recent decision from an order from Judge Hoyt, who considered an almost identical case, called *Sheshtawy versus Conservative Club of Houston*. We have cited that. I have the order, if you would like to see a

copy of it.

There the Court was considering, you know, almost identical allegations, Your Honor, although dealing with Probate Court No. 1 instead of Probate Court No. 4. And the Court held in that order that the allegations that Probate Court No. 1 in Harris County and all the litigants and parties in that court were a RICO enterprise. The Court said that legal theory is, quote, "pure zanyism." The same is true here. We've cited the *Sheshtawy* order in our briefing. You now have a copy of it. This allegation, too, is pure zanyism. It's fanciful, it's delusional, and it fails to state a claim for relief that can be granted by this Court.

The second basis that -- for why plaintiffs' claim fails, is they don't have standing to sue on any of the causes of action they've alleged. First, I want to talk about RICO. And, again, this applies to everyone in this courtroom. Plaintiffs don't have standing to bring suit under RICO, because RICO requires a direct injury in order for a party to sue. A plaintiff can only sue if they can show some RICO violation was a direct and but for cause of the injury. The court in *Sheshtawy*, in that same order I just handed to you, Your Honor, held that plaintiffs had failed to show they had standing to bring a RICO case because, quote, "Routine litigation conduct cannot become a basis for a RICO suit."

That's all that's going on here. Ms. Young

represented Temporary Administrator Lester, who was appointed by the Court. But even if they alleged real allegations of wrongdoing, their assertion that the way there's damage is through this poser advocacy that defunds estates, it's not actionable by them individually as potential beneficiaries of the estate. There's a Sixth Circuit case that we've cited to titled *Firestone*, Your Honor. And in that case the beneficiaries of the Firestone Tire family estate asserted RICO claims against the executor of the estate and the trustee of the estate. And the Sixth Circuit affirmed the district court's dismissal, saying that those plaintiffs, the beneficiaries, didn't have standing to sue. The alleged RICO harm was that the executor of the estate and the trustee of the estate had lowered the value of the estate, such that when the estate paid out, the beneficiaries of the estate didn't get as much money as they should have.

The Court said this is basically like a corporate -- like a corporate -- corporation versus shareholder lawsuit, and there aren't derivative claims here where shareholders can bring the claims. The injury is to the estate. Like when a corporation is injured, the injury is to the corporation. The shareholders to a corporation can't bring suit for an injury that happens to the corporation, just like the beneficiaries of an estate can't bring suit for harm to the estate.

Here it couldn't be more clear. The allegation is all of these people engaged in this advocacy that lowered the value of the estate. If that is a real harm that is really actionable, it's the estate's claim. It's not these individuals' claim.

And then, again, for everyone in this room, Your Honor, the other claims asserted by plaintiffs, the Hobbs Act claim, wire fraud, fraud under 18 U.S.C. Section 1001, honest services fraud, none of those causes of action create -- I'm sorry, none of those statutes create private causes of action. They're all federal criminal statutes that can only be brought by the government. We've cited a plethora of case law in our motion to dismiss, showing that plaintiffs can't bring those claims. That hasn't been responded to. And they should be dismissed.

The third reason that is particular to Ms. Young for why plaintiffs' claims should be dismissed is that Ms. Young is protected by Texas's attorney immunity doctrine. Under Texas law, an attorney is immune from civil liability to a non-client, quote, "for actions taken in connection with representing a client in litigation even when that conduct is wrongful conduct in the underlying litigation." That's a Texas Supreme Court case that held that, *Cantey Hanger versus Byrd*. Here, again, there's no allegation that Ms. Young did anything other than assist Temporary Administrator Lester in his

preparation of this report. That is action she took as an attorney for someone else. She didn't owe a fiduciary duty to plaintiffs. She is immune from suit under Texas's attorney immunity doctrine.

Your Honor briefly mentioned earlier the motion for sanctions that we had filed. Actually in the *Sheshtawy* matter that I mentioned to you, the Court yesterday -- Judge Hoyt yesterday issued an order granting sanctions against the plaintiffs in that matter. We served plaintiffs with our motion for sanctions on September 27th, 2016. Under Rule 11, the safe harbor provision, we waited until October 27th, 2016, to file that motion. Plaintiffs haven't even bothered to respond to that motion. Thus, we ask that when this Court dismisses plaintiffs' complaint, it also grant the motion for sanctions.

THE COURT: Very well.

MR. SCHAEFER: Thank you, Your Honor.

THE COURT: Let's start from my right. Counsel, are there any individual arguments that need to be made on behalf of your client other than what have been asserted by way of this general background?

MR. ABRAMS: The only factual point --

THE COURT: Name and client.

MR. ABRAMS: Thank you, Your Honor. Barry Abrams for Darlene Payne Smith. The only factual point I want to make is

there's one -- only one paragraph in the complaint mentioning Ms. Smith. And the conduct attributed to Ms. Smith was opposing a motion for protection, which is conduct as a lawyer in a litigated matter that falls within the immunity. That's the only factual allegation with regard to Ms. Smith. I join in all the other arguments counsel has made.

THE COURT: Very well.

Ms. Bayless?

MS. BAYLESS: Yes, Your Honor. Bobbie Bayless on my own behalf.

The only point I will make is that factually the only allegation made against me -- I represent one of the Brunsting siblings. And the only allegation made against me is that I withdrew or passed a hearing on a motion for partial summary judgment that I had filed on my client's behalf when he resigned as executor. So, not only did it need to be passed, because at that point there was a vacancy in that position and it would have only been a partial hearing on a partial motion for summary judgment on only his individual claims and not the estate's claims until that vacancy could be filled, but it's also my own motion and I can pass at any time I want to. And that is the allegation against me.

THE COURT: Very well. Ms. Hedge?

MS. BECKMAN HEDGE: Yes, Your Honor. May I approach the lecturn?

THE COURT: Yes.

MS. BECKMAN HEDGE: Thank you. Laura Beckman Hedge. I represent Judge Comstock, Judge Butts, and Toni Biamonte.

Your Honor, there's -- I want to talk about some specific things to my clients and then there's just a few other additional arguments that I would like to add to what's already been discussed that hasn't actually been covered, but that I would want the Court to consider in its ruling.

The claims that have been made against the judges and against the court reporter who -- Toni Biamonte, Your Honor, was a substitute court reporter, not the one that's normally assigned to this probate judge, but actually covered a single hearing and for that has been sued in this case.

They have all been accused of being blatantly corrupt, conspiring to loot assets, exploiting the elders of society, and unjustly enriching the attorneys in this case. The predicate acts that have been alleged in this case against the judges is referral of a case to what the plaintiffs refer to Judge Davidson as an extortionist, thug mediator, and removing a motion for summary judgment from a hearing docket.

With regard to Mr. Biamonte, he has been alleged to have knowingly and willfully destroyed some unidentified material evidence. Your Honor, when a response was filed to our motion to dismiss, the grounds that were given why Mr. Biamonte was sued was because they were not satisfied with

his response concerning the unavailability of a transcript from the single hearing that he recorded. They said that he was sued because he didn't respond to their e-mail. Clearly that is frivolous, and I would argue sanctionable, Your Honor, for bringing him into this lawsuit.

The plaintiffs have sued my clients for at least 15 different claims. With respect to the subject matter jurisdiction argument, counsel's already covered the fact that there was no direct injury. You must have a tangible financial loss. Even the plaintiffs have stated in their pleadings that they are suing for threats of injury to property rights of what Ms. Curtis has, as she has defined, an expectancy interest.

Mr. Munson has no expectancy interest, period. He has identified himself as the domestic partner of Ms. Curtis.

Further, Your Honor, they have alleged fraud, various counts of fraud. They are unspecified. And under Rule 9(b), it requires specificity. They have to state the who, what, when, where, and how. They have a 59-page complaint, 217 paragraphs. They have not been specific and have not met the requirements. There has not been any unlawful act alleged. There are no facts supporting any actionable predicate act. The numerous claims they've made are generalized, and they are not predicate acts of racketeering activity. The claims against my client to which I would refer, and I'm not going to

list them all by name, I'll just refer to them by number, Claims 12, 38, 23, 44, 46, and 47.

The judges, Your Honor, have a unique immunity in this case, and that is judicial immunity. There is case law cited in our motion concerning judicial immunity. The plaintiffs have attempted to get around the judicial immunity argument, because they know it's a winner, by trying to contend that the actions were nonjudicial. However, when you look at the acts they've actually complained of, they are clearly judicial. The factors that are considered are: Is the action normally performed by a judge? Did the act occur in the courtroom? Does the controversy center on a pending case before a judge? Does the act arise from an exchange with the judge in his or her official capacity?

Now, importantly, Your Honor, those factors are construed broadly in favor of immunity, and not all of them are required. In fact, just one factor alone would be sufficient for a finding of judicial -- that there was a judicial act.

The only two exceptions to judicial immunity are: Number one, if it's nonjudicial; or, number two, if the judicial act was taken in a complete absence of jurisdiction. There has been no allegation that any of the actions taken were done in a complete absence of jurisdiction. And there's certainly no facts supporting that.

Additionally, Your Honor, the judges are entitled

to the Eleventh Amendment protection and governmental immunity for claims for them acting in their official capacity. The Fifth Circuit in *Kirkendall versus Grambling* at 4 F.3d 989, that involved a case of RICO violations against three judges and the court's secretary. The court in that case found that they were entitled to judicial immunity and that the court's secretary was entitled to quasi-judicial immunity. The court in that case rejected the plaintiffs' arguments that immunity did not apply as frivolous.

The actions complained of, Your Honor, concerning the judges, that they have obstructed justice by removing the summary judgment motion from the calendar and creating what they call stasis, for conspiring to redirect the litigation away from the public record to a staged mediation, which, Your Honor, actually never took place. Those actions that I've just described, those are functions normally performed by a judge. Clearly what they are complaining about are judicial acts.

Your Honor, I want to turn now to Toni Biamonte, the substitute court reporter. He is entitled to official immunity. He is entitled to that because they have sued him as the, quote, "official court reporter for the probate court." They have not alleged that he's been sued in any individual capacity. When you sue an official in their official capacity, it is the same as suing the county. And Harris County cannot be liable for a RICO violation. And the reason for that is

because, number one, they cannot form the mens rea to commit a criminal act, and intent is required under RICO. And, number two, because RICO is punitive in nature. And municipal entities have common law immunity from punitive damages.

In fact, Your Honor, it was mentioned a minute ago that Judge Hoyt issued an order yesterday of sanctions. And I just want to direct the Court to one thing in particular. And I do have a copy of that order, if it please the Court.

And, Your Honor, I apologize. We do not have a copy of that for the plaintiffs. But I can get that for them as soon as the hearing is over.

MR. SCHAEFER: Your Honor, Rafe Schaefer. I've got a copy. I can pass one on.

MS. BECKMAN HEDGE: Your Honor, what I would just like to point the Court to, on the first page of the order granting sanctions, when the Court granted it, it said it's based on the following findings of fact and conclusions of law. And the one paragraph in here that I want to my highlight for the Court is Paragraph 18. And I just want to read two sentences out of that.

"This motion for a new trial comes on the backdrop of additional claims that were frivolous and that Mr. Cheatham and Mr. Gabel" -- those were the lawyers for the plaintiffs, Your Honor -- "should have known lacked basis. Those include the following: One, there was no basis for

breach of a fiduciary duty claim against opposing attorneys, such as CCJ attorneys; two, there is a litigation privilege in Texas for opposing attorneys like CCJ attorneys with no general fraud exception; three, that the honorable judges and court coordinator are entitled to immunity; four, Harris County, as a governmental entity, cannot be liable under RICO."

Your Honor, there is precedent. As I just read, even Judge Hoyt agrees, that there is immunity that applies and that Harris County cannot be liable. And, therefore, Toni Biamonte in this case cannot be liable.

Finally, Your Honor, there is another immunity that applies here and that is called qualified immunity. It requires the plaintiff to allege that there has been a constitutional violation. There has been no such allegation made and certainly no facts to support it. In, *Bagby versus King*, a case out of the Western District of Texas, the court there held that the claims against the judges, the district clerk, the appeals court clerk were barred by judicial or qualified immunity. In that particular case, Your Honor, there were allegations regarding the way that the case had been handled and the disposition of the cases.

Finally, Your Honor, with respect to the failure to state a claim, which is applicable to all of the defendants here, a few additional points I just want to add. One is that the plaintiffs have failed to allege a conspiracy. They have

used only conclusory language throughout their complaint. The civil conspiracy that they have alleged is a derivative tort. It requires an agreement to commit predicate acts. There are no allegations of any agreement and certainly no facts to support that.

Additionally, Your Honor, they have failed to allege the existence of an enterprise or of an association, in fact, also required for a RICO violation. They contend that Probate Court 4 is an enterprise because it's involved in various aspects of interstate and foreign commerce by a adjudicating suits involving persons and property outside of Texas. A conclusion, Your Honor. There is no facts to support that there is an enterprise in Probate Court 4. It is not a legal entity and cannot be an enterprise.

Additionally, Your Honor, they have also not pled that there has been any pattern of racketeering activity. They only make conclusory allegations.

Thank you, Your Honor. I appreciate your time.

THE COURT: Continuing to move to my left as to defendants as to specific facts or arguments that need to be articulated on behalf of the defendants that you represent -- I don't need to hear a repeat. If you want to adopt what has been said, note that; and if there's anything additional that you need to say, let me know that. So, first, counsel.

MR. REID: Your Honor, Eron Reid for Neal Spielman.

My client represented Amy Brunsting in the Probate Matter 4. The only allegations -- the specific factual allegations him are for his conduct in the March 9th status conference hearing. That's the only additional thing I would add is covered under the attorney immunity.

THE COURT: Very well. Hold it. Anything else?

MR. REID: Nothing other than I adopt everything else.

THE COURT: Very well.

Counsel?

UNIDENTIFIED SPEAKER: Yes, sir --

THE COURT: Hold on.

UNIDENTIFIED SPEAKER: I'm sorry.

THE COURT: I'm going to go here, across the front.

MR. GREENE: Your Honor, Adraon Greene for Defendants Stephen Mendel and Bradley Featherston. The only thing we would like to add, Your Honor, is our clients also represented Mrs. Anita Brunsting as of November 2014. All of the acts alleged against my clients arose from that representation, specifically disseminating -- the dissemination of voice recordings, which they're required to do under the Texas Rules of Civil Procedure, because those voice recordings are witness -- are witness statements.

The objection that was filed to trust distributions, which the court in the probate court sustained, because the court found that that request for a distribution

was not for the health, education, maintenance, and support of any trustee, instead it was for a request to pay attorney's fees.

And, finally, the last act was simply to schedule mediation, which obviously pursuant to the representation of Mr. Brunsting, they thought that was the appropriate thing to do. Otherwise, Your Honor, we adopt all the previously made arguments.

THE COURT: Very well. Coming around this way.

MS. AMY BRUNSTING: Me?

THE COURT: Yes, ma'am.

MS. AMY BRUNSTING: Amy Brunsting.

THE COURT: Why don't you have that mike -- there you go. Thank you.

MS. AMY BRUNSTING: Amy Brunsting. There are just two issues that haven't been addressed yet. The first one is regarding the recordings on the phone. The plaintiff has not shown any evidence or provided any facts that show that I had any knowledge or handling or anything to do with those recordings. Yet I'm accused of doing wiretapping and possessing these things, and I have never seen them. So, there's no basis in fact on that.

And the other one is that they refer to a heinous extortion instrument, which in reality is a qualified beneficiary trust that was prepared for my mother by her and

her attorneys. I had no authority -- I had no business doing any of the preparation of that document at all. That was done while my mother was alive. And that was her private affairs.

On my mother's death, my sister Anita and I became trustees of the Brunsting Family Trust, and that is the only reason that I'm being involved in all of this. But prior to that time, I had no fiduciary responsibility towards the plaintiff. One of the plaintiffs, I've never met before, Mr. Munson. Until this case happened, I had never met him, had any kind of dealings with him. I have no fiduciary responsibility to him that I know of. I've never had any kind of business dealings with him at all. And they cannot -- or have not explained how -- with any kind of facts, as to how I'm connected to him.

THE COURT: And you represent yourself?

MS. AMY BRUNSTING: Yes, sir.

THE COURT: Very well. Ma'am?

MS. ANITA BRUNSTING: Anita Brunsting, representing myself. And I adopt what's been said.

THE COURT: Very well.

Counselor?

MR. OSTROM: Yes, Your Honor. I've got two clients, myself and Mr. Lester. I'm going to break them out separately. With regard to myself, I'm a little different situated than the other parties to this proceeding, because I, in fact, was the

attorney for Ms. Curtis in the underlying proceeding.

The other unique part about it, is that I was terminated before most of the alleged predicate acts that she complains of. So, my termination of role and role in the case has ceased and her facts really don't go to me. To the extent that the facts do go to me, it involves the movement of the case and filing the pleading in Probate Court 4 that asserts claims as to a trust and the defects in a trust. That's important, because we're talking about damage under RICO and her claims, as I understand, still exist. The same claims that she believes she's been harmed or deprived of are still currently pending. They're active claims. The same -- the pleadings she complains that I didn't adequately represent her in support of a conspiracy with the other counsel assert the same claims, and it's still pending. So, I can't see how she can indicate that I've harmed her in any way.

With regard to Mr. Lester, we adopt, and myself, we adopt the arguments already presented. Thank you.

THE COURT: Very well.

MR. MATHEWS: Your Honor, Bernard Mathews, Your Honor. I guess I am alleged to be -- oh, I'm sorry.

THE COURT: No, no. Microphone.

MR. MATHEWS: You can't hear.

I guess I'm alleged to be one of the card carrying members of the probate mafia in Houston, which I would

have to say I would be proud to be a part of in this particular case, because all I can see is hardworking attorneys and court officials trying to bring some resolution to this very bitter dispute between the siblings of this trust.

I personally had about two months of involvement in this case back in 2012 when I represented Anita and Amy Brunsting. I made an appearance in Judge Hoyt's court with respect to a motion to lift a lis pendens so a fair market value sale could occur, and then later communicated some financial information to Ms. Bayless. I'm had no direct representation of the defendants, and I had nothing whatsoever to do with the probate proceedings in Court 4.

So, I would then, again, adopt the attorney immunity doctrine on behalf of both Ms. Brunstings here and all the other arguments which have been made.

THE COURT: Thank you, counselor.

MS. FOLEY: Zandra Foley for Candace Freed and Al Vacek. They are the lawyers who drafted the trust agreements in this case, and so they were not a part of any lawsuit in Probate Court 4. They are not a party, and they never represented any of the parties in Probate Court 4. So, I adopt the arguments that have been made everyone else. However, with respect to the immunity, that wouldn't apply to my clients. But something kind of similar would, and that is the *Barcelo* case, *Barcelo versus Elliot*, which is a Texas Supreme Court

case from 1996. And that case essentially held that beneficiaries are not permitted to sue the estate planning lawyer, simply because it relies on the age old rule of privity. Meaning you have to have privity with the lawyer in order to sue them. And so that argument is a little bit different.

The only other thing I'll mention is that specifically with respect to Mr. Munson, in response to our motion to dismiss the plaintiff, in Paragraph 69, specifically states, "One thing plaintiffs and defendants appear to agree on is that Munson is not a party to any of the prior lawsuits nor is he a beneficiary of the Brunsting family trust, and that" -- and he's quoting our motion -- "it is inconceivable that he could be injured as a result of V & F's," that's Vacek and Freed, "drafting of the estate planning documents." And based on that admission and all the other arguments, we believe that these claims should be dismissed.

THE COURT: Very well. And?

MR. FEATHESTON: Your Honor, I'm Brad Featherston.

THE COURT: Very well. And?

MR. MENDEL: I'm represented by Mr. Greene, Your Honor.

THE COURT: Very well.

All right. You heard the motions to dismiss, the presentation, Ms. Curtis; is that correct?

MS. CURTIS: Yes.

THE COURT: That gives you the opportunity to respond to any of the arguments that you've heard regarding why your case -- why your cause of action should be dismissed. If you want to stand at the table, that's fine, but just pull the mike up, so that we can hear you.

And, first of all, just to get this clear, so I understand, are you a licensed attorney?

MS. CURTIS: No, sir.

THE COURT: Okay. So, you're just an individual representing yourself and you filed this law enforcement on behalf of yourself?

MS. CURTIS: Yes, I did.

THE COURT: Very well. You may proceed.

MS. CURTIS: I'd like for Mr. Munson to respond to these, if it's okay.

THE COURT: Okay. Now, Mr. Munson, are you an attorney?

MR. MUNSON: No, sir.

THE COURT: Okay. Mr. Munson cannot represent you. He's not an attorney. And so to the extent that there is a response by you, it has to come from you. And Mr. Munson, to the extent that he has causes of action, he can assert those or respond to those on his own behalf, but he's not allowed to speak for you. Do you understand?

MS. CURTIS: Yes.

THE COURT: All right. So with that being said, do you have anything you wish to say to me?

MS. CURTIS: Okay. May I wait until he's done?

THE COURT: Yes.

MS. CURTIS: Okay.

THE COURT: And you're Mr. Munson?

MR. MUNSON: Yes, sir, I am.

THE COURT: And, Mr. Munson, you're going to come up to the podium. Very well. And you told me you're not an attorney, correct?

MR. MUNSON: No, sir.

THE COURT: And you're representing yourself in this matter?

MR. MUNSON: Yes, sir.

THE COURT: Very well.

MR. MUNSON: I'm representing myself, and I'm a private attorney general representing the public interests as well.

THE COURT: What does that mean, a private attorney general?

MR. MUNSON: Well, the RICO statutes under 1964(c) provide a private cause of action for private plaintiffs. 1963 is the cause of action for public prosecutors. The Congress when they drafted the RICO statutes mentioned in the

legislative committee reports, that they didn't believe that -- and it's in all kinds of case law, that they didn't believe that the public prosecutor resources were adequate to address organized crime. They didn't say why they didn't think they were adequate, and I'm not going to address those issues.

THE COURT: But that's what your explanation as to what private attorney general is for --

MR. MUNSON: A private attorney general is someone who advances a matter in the public interest.

THE COURT: All right. So, now in regards to the arguments articulated on behalf of the defendants who are seeking motions to dismiss, what is your response on behalf of yourself, not on behalf of Ms. Curtis, because you cannot represent --

MR. MUNSON: I'm aware of that. Okay.

THE COURT: Okay.

MR. MUNSON: But they are the same issues, technically speaking.

THE COURT: Very well.

MR. MUNSON: All of these defendants have entered plenary admissions in this matter, and you've heard them all repeat them today. They insist a probate matter, that this arises from a probate matter. *Curtis v. Brunsting* in the Fifth Circuit, that's -- I'm been in Texas for five years. And when I see the Brunsting Trust, there is no probate. If we read the

wills, which none of these defendants who claim probate even bother to do, you'll find out that everything that the will authorized to be done was completed five days before the so-called probate matter was filed. The inventory was submitted on April 4th. It was approved and filed with a drop order on April 5th. Five days later, the same day Judge Hoyt issued an injunction to Mrs. Curtis in the probate -- in the trust related case in the federal court, Bobbie Bayless filed her probate matter.

Now, nothing in the so-called probate matter addresses anything but the trust, and none of the claims contained in the so-called probate matter are contained in the list of inventory and assets. There is no probate matter. *Curtis v. Brunsting* is related to the Brunsting Trust. It is not property belonging to the estate of Nelva Brunsting or Elmer Brunsting. That was settled by the Fifth Circuit Court of Appeals. And I don't think we're going against the Fifth Circuit in regard to that judgment in this case.

I'm not here to try the case, but there is no probate matter, because there's no jurisdiction in the probate court. We have two problems with 12(b)(6) and 12(b)(1). The first one is 12(b)(6) relies upon --

THE COURT REPORTER: Can you slow down?

MR. MUNSON: Okay. Have to rely upon the statement of facts made in the complaint. All of the defendants offer a

contrary view of the facts. They're not allowed to do that under 12(b)(6). They can do that under a factual challenge under 12(b)(1), but they have to support it with affidavits and documents outside the record. They do none of those things.

So, the whole idea of immunity is based upon subject matter jurisdiction. Nothing in the probate court involved anything but the Brunsting Trust. If you were to ask these defendants to identify a probate claim pending in the probate matter, the only thing that comes out of their mouth is trust. The trust is not an asset belonging to the estate. I have no have interest in the probate. There was no probate. It was completed before the probate matter was filed. I have no interest in the trust. However, I have an interest in my household.

Plaintiff Curtis and I are domestic partners. And this case is robbing assets from my home and redirecting them to courts in Texas in order for her to defend her property interest. It is not an expectancy. It is a property right. The expectancies come from the estate. Now, I heard one of the lawyers mention Foster (phonetic). There was a will challenge in Foster. There's no will challenge in the Brunsting case. If you read the wills, none of the five Brunstings are heirs to the estate. Only the trust is an heir to the estate. The Fifth Circuit did read the will. But none of these defendants in their 200 some pages of motions to dismiss, they all say

probate matter, probate matter, probate matter. Not one of them mentions the will. The reason for that is to give the lie to the claim that it's a probate matter.

They also claim they have no idea what *Curtis v. Brunsting* is. *Curtis v. Brunsting* is the case that was in possession of the Brunsting Trust, beginning on 2-12-20 -- 2-27-2012 and continuing until this remand to the so-called probate matter. You cannot remand a plaintiff for consolidation with a case where she is a defendant. Dicey's rules of parties to action number five says that a plaintiff cannot be a defendant in the same action.

Bobbie Bayless named plaintiff Curtis a defendant in the probate matter. The whole notion that she could be remanded to probate to consolidate with Carl Brunsting in non-litigation, where she was a defendant, is a false thesis.

Under 12(b)(6) the Court is compelled to accept the facts in the complaint. Under 12(b)(1), they can't challenge those facts without support. They've done neither one of those. And yet they come in here insisting a completely different set of facts. Their immunity claims are based upon the notion of subject matter jurisdiction. There is no subject matter jurisdiction over the Brunsting Trust in the probate court. The Fifth Circuit is controlling. They address that. It's only seven pages. But I don't think any of these people

ever read it. I'm not sure they've ever read anything, because they keep repeating themselves like they're broken records. And yet, there is no probate matter.

There was never about a probate matter after the inventory and listed claims were submitted and the matter dropped. In fact, it was a year later that the Brunsting case was remanded to probate and suddenly became the estate of Nelva Brunsting, which the Fifth Circuit said it's not. It was six months later that Carl Brunsting applied for letters testamentary the second time. That's October 17th, 2014. So when it was filed, he filed it individually, but he has no standing as an heir of the estate and as executor for the estate, which was closed, and he had no letters testamentary for.

This is all just one big scam from chumming to bring in people who want to protect their assets, to promising them peace of mind, and then deciding which ones would be subject to redirection to the probate for now to be looted. And the defendants all object to the record of proceedings. But the record of proceedings is conclusive. We believe that on the record this case is subject to -- you know, is ripe for summary judgment on the pleadings, but we also know there is more that we can obtain by discovery.

There's lots of obfuscation in terms of the accounting for the Brunsting Trust. All of these lawyers have

gotten in the way. And if we look at the transcript of the March 9th, I was personally present and witnessed that little charade, I was so offended by the conduct. These grinning jackals, like we're going to rip you off and what are you going to do about it. That's what your misplaced notions of immunity have generated, a bunch of people who have no concern for the administration of justice or the rule of law, and that's what this case is about. It's about public corruption, and that's why I'm here as a private attorney general.

THE COURT: I only have one question. You stated that you were a domestic partner to Ms. Curtis?

MR. MUNSON: Yes.

THE COURT: As to a domestic partner, what legal rights under Texas law does that give you a connection with the issues in this case? I just want to -- because I assume when you say "domestic partner," you didn't use the word "husband" or --

MR. MUNSON: No, or spouse.

THE COURT: Or spouse.

MR. MUNSON: No.

THE COURT: You just said "domestic." So, what legal rights does that give you?

MR. MUNSON: I believe I addressed that in the Docket 89, where I mentioned Judiciary Rule 1927. It's codified at 28 U.S.C. 1927. And it gives you three instances in which

Mrs. Curtis is entitled to compensation for her expenses. Okay? And I have been asked by Mrs. Curtis to step in as act as the trust protector and to assist her in trying to figure out this very, very intentionally convoluted case. I mean, they made a mess of the finances, claimed to have them straightened out and then dumped everything in a big box for --

THE COURT: Hold on. Because I want to make sure we're --

MR. MUNSON: Okay.

THE COURT: -- we're on the same page.

MR. MUNSON: Okay.

THE COURT: You acknowledged early on before you began your remarks, that you cannot represent -- legally represent Ms. Curtis, only an attorney can do that or only Ms. Curtis can do that.

MR. MUNSON: Yes -- well --

THE COURT: Let me finish. In connection with your interest in -- if I heard you correctly, and correct me if I'm wrong, you stated that you were a domestic partner to Ms. Curtis. And I'm trying to get an understanding as to what you are asserting by --

MR. MUNSON: We have shared finances.

THE COURT: Don't interrupt me --

MR. MUNSON: Sorry.

THE COURT: -- by asserting that you are a domestic

partner to Ms. Curtis. So, what --

MR. MUNSON: We have a joint household. We have joined financial considerations. I don't handle any of the finances. I have renters, but I don't collect any of the rents. I have Mrs. Curtis do all of that. Okay? She's my partner. She handles that part of it. I'm a saxophone player.

THE COURT: When you say "partner" --

MR. MUNSON: Yes, domestic partner. We sleep in the same bed. We live together.

THE COURT: Well, I'm not trying to get that familiar. But partner also has a commercial context to it. So, you're not business partners?

MR. MUNSON: No, no, no, not specifically. We do have some plans that are being interfered with, but we're not able to pursue those at the moment.

THE COURT: Okay. Now I understand. Thank you, sir.

MR. MUNSON: And as far as these attorneys claiming that no one can assist without -- I think it was Docket Entry 90, the one -- the document filed untimely, just before this hearing, where they bring up the mention of this unlicensed practice of law. I would love to hear a definition of that, as well as a definition of probate from these defendants. Because my understanding is that I do have standing. And I'm relying on Supreme Court precedent. I did draft all of the drafts for all of the motions in this case, because Mrs. Curtis works in

the daytime. So, I've been involved in this for five years. I've had my time redirected to this matter, and it is all one big public corruption fraud.

THE COURT: Thank you, sir.

Ms. Curtis?

MS. CURTIS: I just know that I'm here today because all of these people are standing between me and my property. And I've been trying to get it and get information about it since right after my mother passed away on November 11th, 2011. As far as I'm concerned, all five of the Brunsting siblings are victims here, because there's attorneys here that have extended them credit to continue to avoid their responsibility.

I was directed to hire an attorney, because my domestic partner was in a coma and I could not prepare for a hearing in October of 2013 properly. So, I failed miserably, and Judge Hoyt directed me to hire an attorney so the discovery process could go forward. And after he got out of the hospital, it was a couple of months before he could even think straight. When you have open heart surgery, it's a serious matter. And we looked high and low to find an attorney to represent me, and couldn't until finally we contacted Mr. Ostrom, who convinced us that he would be the person to take this over and immediately proceeded to do things against my instructions, not keep me informed of what was going on and then somehow managed to get me out of the federal court into

the probate court where there is no jurisdiction and there wasn't.

So, I was stuck in a nightmare for two and a half years and I couldn't get out. I tried to file summary judgment and declaratory judgment motions, which I filed, but I couldn't get a hearing for those. But they could hear whether they were going to have another mediation, so that they could unentrench me from my belief that this property belonged to me and they were holding it. So, that's why I'm here today.

Mr. Munson has been helping me since the very beginning. I've known him for almost ten years now, and that was my only choice.

THE COURT: The defendants in this case have made some very specific legal arguments as to why your case should be dismissed as to their various clients, from judicial immunity to failure to state a claim and a host of issue legal issues that you heard in between. So, in regards to a response to those specific legal assertions by these defendants, judicial immunity, failure to state a claim, do you have any specific response other than what you've put on paper already?

MS. CURTIS: Well, I believe that if there's no jurisdiction, there are no judges, there are no lawyers, and there is no litigation. And if there is no litigation, then there is no immunity. And I don't believe that there is litigation relating to the trust in Probate Court No. 4.

Although, the report from Greg Lester, which was supposed to evaluate the merits of the claims in state court, said nothing about the estate of Nelva Brunsting. All they talked about is the trust and how Ms. Curtis and her brother Carl are going to be disinherited by the no contest clause in this mysterious qualified beneficiary designation, that they can't even produce the original signed document of and for which there are three different signature pages.

So, I'm here because I was at wit's end. I was stuck in probate court and being pushed towards a mediation where they were going to unentrench me from going after what belongs to me, what my parents gave to me that is mine now and they're holding it.

THE COURT: Thank you. And just by way of housekeeping, just I'm trying to get a better sense of the players on the chess board, are you related to these two ladies over here?

MS. CURTIS: These are my two youngest sisters.

THE COURT: Okay. And so --

MS. CURTIS: Carl is my brother, who was represented by Bobbie Bayless.

THE COURT: Is he here?

MS. CURTIS: No.

THE COURT: Okay. So, you have -- all right. Very well. Thank you.

What I would like to do -- what I'm going to do, I'm going to wade into the specific motions to dismiss, to get an understanding as to who is going to remain in this case, maybe none of you, maybe all of you, I don't know. I'm going to -- I wanted to hear your oral arguments. And you cited some additional considerations for me to look at, and so I'm going to do that. Once I made a determination as to what motions to dismiss -- how to dispose of them, being granted, being denied, then we can, if necessary, make a plan going forward as far as some type of managed discovery. Right now I think that would be unwielding given the number of players on this chess board and also given the fact that some of you may not be here -- some of the defendants may not be here. Some of the -- you know, one of the ones that I was troubled by, and I'm going to get a better explanation for it -- and obviously this is oral argument and everything is short-circuited to that, but the court reporter. And to the extent that someone is sitting there just taking down a record, I'm not sure of the legal causes of action to which that person may have subjected himself. And as to some of the attorneys, I'll look at that, as well as the judges, that's separate and apart. But, for instance, the court reporter, who was a substitute court reporter, as described, just sticks out, and I just wanted to see exactly what his involvement was in the case. No need to comment.

And so I just need to dive -- lawyers, representatives say something in court and my review may reveal a different determination, and so that's what I need to do. But because of that alert going off, that maybe there's someone who doesn't belong here, we're going to keep -- we're going to hold off on discovery. Because I don't want people to participate in discovery if they're not going to be here for the long-haul. I think that manages the cost for everyone and conserves resources for the individual clients. So, I think that's the best way to proceed.

Now, having said that, that puts on me a burden of being timely and making sure that these motions to dismiss are disposed of such that the plaintiffs, if this case goes forward, are entitled to some type of discovery for the remaining defendants on the causes of actions that remain. And, so, we cannot delay that process forever, if it's going to go forward. So, I will endeavor to be efficient as I can in getting these motions to dismiss disposed of, so we'll know who's left on the board, and then we can move forward with some type of managed discovery plan that makes sense. That's what I'm going to do.

I assume, before I walked out here, that that covered all of the motions to dismiss. Were there any other motions to dismiss that were not addressed today? All right.

Are there any other motions that were not

addressed today that needed to be addressed?

Mr. Munson, Ms. Curtis, any other motions, pending motions on my docket? All right.

So let me again address the motions that have been presented. Anything else that we need to address before we adjourn today, starting on my right?

MR. ABRAMS: No, Your Honor.

THE COURT: No?

MS. BAYLESS: Well, I do have this question. My name came up a lot more than I expected it to in this hearing, and some things were said which I did not realize were allegations, this allegation that there's no probate proceeding when there is. I don't know if the Court wants to entertain some brief --

THE COURT: No.

MS. BAYLESS: Okay.

THE COURT: I don't want any additional briefing.

MS. BAYLESS: All right. Well, thank you, Your Honor.

THE COURT: To the extent that I dig into this and I determine that additional briefing is necessary on a specific point, my clerk will contact you and ask for it. But as a general rule, I don't want you to submit additional briefing on what you've already briefed. There may be something that I'll dig into that I will ask for additional briefing on, but as of right now, there's no need to submit additional briefing.

Anything else from this side?

MR. HARRELL: No, Your Honor.

THE COURT: Very well.

MS. BECKMAN HEDGE: Nothing, Your Honor.

THE COURT: Ms. Curtis, anything else?

MS. CURTIS: No, Your Honor.

THE COURT: Mr. Munson?

MR. MUNSON: I would like leave, sir -- I'm sorry. I would like leave to file a brief on the public attorney general.

THE COURT: Not necessary. During your presentation you made some specific cites. We have a record. So, I will check that. If it's turns out that I have additional questions, I will have my clerk contact you for additional information. Anything else, Mr. Munson?

MR. MUNSON: Yeah, we do have a private attorney general statute in California. It's government code -- it's California Business and Professions Code 17204 and 17535, which also address the issues.

THE COURT: So, in regard -- and since you cited that to me, I'm just going to ask the question, we're sitting in a Federal District Court in Texas. How does the California statute work in this case?

MR. MUNSON: It mimics the Supreme Court on the subject.

THE COURT: Okay. Very well.

Anything else, issues from this side of the room that the Court needs to be aware of before we adjourn? Yes, ma'am.

MS. AMY BRUNSTING: Amy Brunsting. I just wanted to clarify how many siblings were involved. Candy is the oldest. There's another one --

THE COURT REPORTER: Can she use the microphone?

THE COURT: Hold on. Use the microphone.

MS. AMY BRUNSTING: Sorry. There's five siblings in our family. Candy is the oldest. Carole Brunsting is next. Carl Brunsting is the third. I'm the fourth, Amy Brunsting, and Anita Brunsting. So, we're the five siblings. I think only four of them were mentioned. Just clarity.

THE COURT: You said Candace Brunsting?

MS. AMY BRUNSTING: Candace -- Candy Curtis, I'm sorry.

THE COURT: Okay. All right. Very well. Thank you.

Any other clarifications, any other additional information that I need? Over there?

MR. MUNSON: Standing of a private attorney general under civil rights is different than under RICO. RICO is the only situation where a private attorney general does not also have to be an attorney.

THE COURT: Thank you, sir.

All right. We are adjourned. You are excused.

Happy holidays to you.

(Concluded at 1:00 p.m.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause, to the best of my ability.

/s/ Kathy L. Metzger 6-27-2017

Kathy L. Metzger Date

Official Court Reporter