

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 PIERRE HASCHEFF, AN Case No. 86976
3 INDIVIDUAL,

4 Appellant/Cross-Appellant,

5 vs.

6 LYNDA HASCHEFF, AN
7 INDIVIDUAL,

8 Respondent/Cross-Appellant.

Electronically Filed
Nov 16 2023 03:35 PM
Elizabeth A. Brown
Clerk of Supreme Court

9 **APPENDIX TO APPELLANT'S OPENING BRIEF**

10 Volume 4 of 8 – Pages AA 0751-1000

11 FENNEMORE CRAIG, P.C.

12
13 Therese M. Shanks
14 Nevada Bar No. 12890
15 7800 Rancharrah Parkway
16 Reno, NV 89511
17 (775) 788-2257

tshanks@fennemorelaw.com

18 *Attorney for Appellant/Cross-Respondent Pierre Hascheff*

APPENDIX – CHRONOLOGICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED	VOL. NO.	PAGE NO.
Counter-Petition to Surcharge Trustee	01/19/2018	1	AA 0001 – 0040
Amended Objection and Counter-Petition regarding Issue Trust	03/23/2018	1	AA 0041 – 0079
Trial Transcript	02/22/2019	1, 2	AA 0080 - 0284
Trial Transcript	02/25/2019	2, 3	AA 0285 - 0638
Verdict	03/04/2019	3	AA 00639 - 0642
Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree	06/16/2020	3	AA 0643 - 0697
Opposition to Motion for Clarification or Declaratory Relief regarding Terms of MSA and Decree	07/06/2020	3	AA 0698 - 0732
Motion for Order to Show Cause, or in the Alternative to Enforce the Court’s Order	07/08/2020	3, 4	AA 0733 – 0762
Reply in Support of Motion for Clarification or for Declaratory Relief regarding Terms of MSA and Decree	07/13/2020	4	AA 0763 - 0777
Opposition to Motion for Order to Show Cause, or in the Alternative to Enforce the Court’s Order	07/17/2020	4	AA 0778 – 0788
Reply to Opposition to Motion for Order to Show Cause, or in the Alternative to Enforce the Court’s Order	07/24/2020	4	AA 0789 - 0842
Order Setting Motion re MSA for Hearing; Order Holding in Abeyance Motion for Order to Enforce and or for an Order to Show Cause	09/09/2020	4	AA 0843 - 0853
L. Jaksick Opposition to Petition for Instructions	11/16/2020	4	AA 0854 - 0857
W. Jaksick Opposition to Petition for Instructions	11/16/2020	4	AA 0858 - 0924
A. Jaksick Objection to Petition for Instructions	11/17/2020	4	AA 0925 - 0932
Minutes – Status Conference (12/07/2020)	12/08/2020	4	AA 0933
Lynda A. Hascheff Notice of Hearing Witnesses and Exhibits	12/17/2020	4, 5	AA 0934 - 1089
Notice of Exhibits	12/17/2020	5	AA 1090 – 1162
Pierre Hascheff’s Hearing Statement	12/17/2020	5	AA 1163 - 1194
Lynda Hascheff’s Hearing Statement	12/17/2020	5	AA 1195 - 1214
Hearing Minutes	12/21/2020	5	AA 1215 - 1218

Transcript of Proceedings Evidentiary Hearing	12/21/2020	7, 8	AA 1716 - 1827
Order Granting Petition for Instructions & Motion to Partially Enforce Settlement Agreement	01/08/2021	5	AA 1219 - 1221
Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorney's Fees and Costs	02/01/2021	5	AA 1222 - 1236
Order Finding Violation of NRS 163.115	02/10/2021	5	AA 1237 - 1239
Order Appointing Temporary Trustee	02/25/2021	5	AA 1240 - 1242
Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal	12/15/2021	5, 6	AA 1243 - 1298
Appellant's Reply Brief on Appeal and Answering Brief on Cross-Appeal	02/14/2022	6	AA 1299 - 1372
Respondent/Cross-Appellant's Reply Brief on Cross-Appeal	03/07/2022	6	AA 1373 - 1390
Order Affirming in Part, Reversing in Part, and Remanding	06/29/2022	6	AA 1391 - 1402
Order Setting Status Hearing	08/12/2022	6	AA 1403 - 1406
Brief re Outstanding Issues	09/26/2022	6	AA 1407 - 1410
Status Conference Statement	09/26/2022	6	AA 1411 - 1414
Motion to Strike	09/27/2022	6	AA 1415 - 1418
Status Conference, Audio Transcription	09/28/2022	8	AA 1828 - 1869
Order after Status Hearing	09/29/2022	6	AA 1419 - 1421
Notice of Filing Invoices and December 26, 2018 Complaint (Confidential)	10/12/2022	6	AA 1422 - 1458
Pierre Hascheff Brief Statement	10/31/2022	6	AA 1459 - 1464
Lynda Hascheff Brief re Alleged Ambiguity in Paragraph 40	11/02/2022	6	AA 1465 - 1469
Order Regarding Ambiguity in MSA § 40 and Remand	12/08/2022	6	AA 1470 - 1475
Motion to Allow Briefing on Prevailing Party	12/27/2022	6	AA 1476 - 1479
Opposition to Motion to Allow Briefing on Prevailing Party	01/09/2023	6	AA 1480 - 1483
Reply on Motion to Allow Briefing on the Issue of the Prevailing Party	01/17/2023	6	AA 1484 - 1488
Order Denying Motion to Allow Briefing on Prevailing Party	02/15/2023	6	AA 1489 - 1493
Order Regarding Indemnification of Fees and Costs Under MSA § 40; Order Regarding Prevailing Party Under MSA § 35.1	02/17/2023	6, 7	AA 1494 - 1503

Notice of Filing Wilfong Affidavit	03/10/2023	7	AA 1504 - 1583
Opposition/Response to Wilfong Affidavit	03/24/2023	7	AA 1584 - 1604
Supplemental Opposition to Wilfong Affidavit	04/14/2023	7	AA 1605 - 1655
Stipulation and Order regarding Attorney Client Privilege	04/17/2023	7	AA 1656 - 1658
Reply to Supplemental Opposition to Wilfong Affidavit	04/18/2023	7	AA 1659 - 1668
Motion to Approve Resolution of T. Jaksick Creditor Claims	05/18/2023	7	AA 1669 - 1698
Order Awarding Attorney's Fees	06/12/2023	7	AA 1699 - 1711
Order Granting Motion to Approve Resolution of T. Jaksick Creditor Claims	08/02/2023	7	AA 1712 - 1715

APPENDIX – ALPHABETICAL TABLE OF CONTENTS

DOCUMENT	DATE FILED	VOL. NO.	PAGE NO.
A. Jaksick Objection to Petition for Instructions	11/17/2020	4	AA 0925 - 0932
Amended Objection and Counter-Petition regarding Issue Trust	3/23/2018	1	AA 0041 – 0079
Appellant’s Reply Brief on Appeal and Answering Brief on Cross-Appeal	2/14/2022	6	AA 1299 - 1372
Brief re Outstanding Issues	9/26/2022	6	AA 1407 - 1410
Counter-Petition to Surcharge Trustee	1/19/2018	1	AA 0001 – 0040
Hearing Minutes	12/21/2020	5	AA 1215 - 1218
L. Jaksick Opposition to Petition for Instructions	11/16/2020	4	AA 0854 - 0857
Lynda A. Hascheff Notice of Hearing Witnesses and Exhibits	12/17/2020	4, 5	AA 0934 - 1089
Lynda Hascheff Brief re Alleged Ambiguity in Paragraph 40	11/2/2022	6	AA 1465 - 1469
Lynda Hascheff’s Hearing Statement	12/17/2020	5	AA 1195 - 1214
Minutes – Status Conference (12/07/2020)	12/8/2020	4	AA 0933
Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree	6/16/2020	3	AA 0643 - 0697
Motion for Order to Show Cause, or in the Alternative to Enforce the Court’s Order	7/8/2020	3, 4	AA 0733 – 0762
Motion to Allow Briefing on Prevailing Party	12/27/2022	6	AA 1476 - 1479
Motion to Approve Resolution of T. Jaksick Creditor Claims	5/18/2023	7	AA 1669 - 1698
Motion to Strike	9/27/2022	6	AA 1415 - 1418
Notice of Exhibits	12/17/2020	5	AA 1090 – 1162
Notice of Filing Invoices and December 26, 2018 Complaint (Confidential)	10/12/2022	6	AA 1422 - 1458
Notice of Filing Wilfong Affidavit	3/10/2023	7	AA 1504 - 1583
Opposition to Motion for Clarification or Declaratory Relief regarding Terms of MSA and Decree	7/6/2020	3	AA 0698 - 0732
Opposition to Motion for Order to Show Cause, or in the Alternative to Enforce the Court’s Order	7/17/2020	4	AA 0778 – 0788
Opposition to Motion to Allow Briefing on Prevailing Party	1/9/2023	6	AA 1480 - 1483
Opposition/Response to Wilfong Affidavit	3/24/2023	7	AA 1584 - 1604

Order Affirming in Part, Reversing in Part, and Remanding	6/29/2022	6	AA 1391 - 1402
Order after Status Hearing	9/29/2022	6	AA 1419 - 1421
Order Appointing Temporary Trustee	2/25/2021	5	AA 1240 - 1242
Order Awarding Attorney's Fees	6/12/2023	7	AA 1699 - 1711
Order Denying Motion to Allow Briefing on Prevailing Party	2/15/2023	6	AA 1489 - 1493
Order Finding Violation of NRS 163.115	2/10/2021	5	AA 1237 - 1239
Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorney's Fees and Costs	2/1/2021	5	AA 1222 - 1236
Order Granting Motion to Approve Resolution of T. Jaksick Creditor Claims	8/2/2023	7	AA 1712 - 1715
Order Granting Petition for Instructions & Motion to Partially Enforce Settlement Agreement	1/8/2021	5	AA 1219 - 1221
Order Regarding Ambiguity in MSA § 40 and Remand	12/8/2022	6	AA 1470 - 1475
Order Regarding Indemnification of Fees and Costs Under MSA § 40; Order Regarding Prevailing Party Under MSA § 35.1	2/17/2023	6, 7	AA 1494 - 1503
Order Setting Motion re MSA for Hearing; Order Holding in Abeyance Motion for Order to Enforce and or for an Order to Show Cause	9/9/2020	4	AA 0843 - 0853
Order Setting Status Hearing	8/12/2022	6	AA 1403 - 1406
Pierre Hascheff Brief Statement	10/31/2022	6	AA 1459 - 1464
Pierre Hascheff's Hearing Statement	12/17/2020	5	AA 1163 - 1194
Reply in Support of Motion for Clarification or for Declaratory Relief regarding Terms of MSA and Decree	7/13/2020	4	AA 0763 - 0777
Reply on Motion to Allow Briefing on the Issue of the Prevailing Party	1/17/2023	6	AA 1484 - 1488
Reply to Opposition to Motion for Order to Show Cause, or in the Alternative to Enforce the Court's Order	7/24/2020	4	AA 0789 - 0842
Reply to Supplemental Opposition to Wilfong Affidavit	4/18/2023	7	AA 1659 - 1668
Respondent/Cross-Appellant's Reply Brief on Cross-Appeal	3/7/2022	6	AA 1373 - 1390
Respondent's Answering Brief on Appeal and Opening Brief on Cross-Appeal	12/15/2021	5, 6	AA 1243 - 1298

Status Conference Statement	9/26/2022	6	AA 1411 - 1414
Status Conference, Audio Transcription	9/28/2022	8	AA 1828 - 1869
Stipulation and Order regarding Attorney Client Privilege	4/17/2023	7	AA 1656 - 1658
Supplemental Opposition to Wilfong Affidavit	4/14/2023	7	AA 1605 - 1655
Transcript of Proceedings Evidentiary Hearing	12/21/2020	7, 8	AA 1716 - 1827
Trial Transcript	2/22/2019	1, 2	AA 0080 - 0284
Trial Transcript	2/25/2019	2, 3	AA 0285 - 0638
Verdict	3/4/2019	3	AA 00639 - 0642
W. Jaksick Opposition to Petition for Instructions	11/16/2020	4	AA 0858 - 0924

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
3 COUNTY OF WASHOE) ss.
4

5 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

6 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
7 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

8 2. I was retained by Hascheff once he received a multi-page subpoena requesting
9 any and all documents, correspondence, communications etc. with respect to his estate
10 planning and related advice to Samuel Jaksick and related parties.

11 3. It was prudent on Hascheff's part to retain counsel immediately because the
12 information requested clearly was aimed at undermining his estate plan and advice which
13 could lead to a malpractice action depending on the jury verdict.

14 4. It was clear that Hascheff was being accused of malfeasance and mishandling
15 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
16 their share of the estate.

17 5. There was also a possible claim by another beneficiary that Hascheff provided
18 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
19 brother and sister with a substantial damage claim against him.

20 6. Hascheff was clearly at risk depending on the outcome of the underlying
21 litigation.

22 7. There were two days of depositions and two days of trial testimony, not to
23 mention countless meetings with various attorneys to protect Hascheff's interests.

24 8. The fees and costs incurred in this case were necessary and reasonable to
25 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
26 million dollar claim against him outside the coverage limits of his applicable insurance policy.

27 9. It should be noted that malpractice actions are not typically filed until the
28 conclusion of the underlying litigation to determine whether the attorney is guilty of
malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 10. The time entries and description of the work conducted by my firm included in
2 my billing invoices to Hascheff contain attorney-client privileged information. Certain entries
3 do not include attorney-client information and therefore can be provided with privileged
4 information redacted. These detail time entries can be provided without prejudice and waiver
5 of the privilege. It is my understanding Hascheff has already provided only our billing
6 summaries to you.

7 11. Any correspondence between Hascheff and my firm is protected by attorney-
8 client privilege and will not be produced. Similarly, any correspondence and all
9 communications between my firm and Jaksicks' attorneys are also privileged and/or
10 confidential and will not be produced.

11 12. The time and work in preparing this affidavit and related work is related to the
12 malpractice action and will be billed accordingly.

13 13. I declare under penalty of perjury the foregoing is true and correct.

14 Dated: this 10th day of April, 2020.



TODD R. ALEXANDER, ESQ.

15
16
17
18
19
20
21
22
23
24
25 LEMONS, GRUNDY
& EISENBERG
26 6005 PLUMAS ST.
THIRD FLOOR
27 RENO, NV 89519
(775) 786-6868

28

FILED
Electronically
DV13-00656
2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "2"

EXHIBIT "2"

AA 0753

From: Pierre Hascheff pierre@pahascheff.com
Subject: Re: Attached Image
Date: Feb 5, 2020 at 4:41:58 PM
To: Lucy Mason lucy.masonsena@yahoo.com

EXHIBIT 2

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.

There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to

enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

On Feb 11, 2020, at 11:24 AM, Diana Lechner <diana@nelwscott.com>

wrote:

Enclosed is a check for \$4,675.90.

Thank you,
Diana Lechner

From: Lucy Mason lucy.masonsena@yahoo.com
Subject: Your demand to Lynda Hascheff
Date: Feb 4, 2020 at 11:42:04 AM
To: Pierre Hascheff pierre@pahascheff.com
Cc: smeador@woodburnandwedge.com

EXHIBIT 2

Pierre –

Lynda forwarded me the invoices and letter you sent her in the mail. It appears that you are demanding that she pay half the entire amount billed in the malpractice matter, as opposed to half the amount you have actually paid. The invoices reflect that the insurance company (Allied World) has paid a large amount to date and you have paid \$3,000. There is a handwritten note that you have paid the balance of the remaining bill dated 10/23/19, but there is no canceled check or subsequent invoice reflecting that.

Please provide the following documentation so that we can assess your demand:

1. A copy of the insurance policy pursuant to which you have made a claim
2. All correspondence with your insurance company and adjuster about the claim
3. All detailed billings/invoices you have received to date from Lemons, Grundy or any other firm working on your behalf on this matter, including all time entries by attorneys working on the claim
4. All proof of payment you claim you have made on any bills reflected in 3) above
5. All relevant pleadings in this matter, including but not limited to your response to the complaint

Finally, you had notice of this potential claim for well over 16 months, and undoubtedly much longer. You have a fiduciary duty to Lynda as it relates to this claim to keep her apprised and in the loop. By asking me to send you this note in response to your demand, she is in no way waiving whatever recourse she may have for your breach of that duty. I am helping Lynda as her sister, not as an attorney. Should this require the need for legal services, she will hire an attorney.

Thank you.

Lucy

From: Pierre Hascheff [<mailto:pierre@pahascheff.com>]
Sent: Sunday, January 26, 2020 7:59 AM
To: Lucy Mason
Subject: Fwd: Attached Image

Here's a copy of the Page requiring reimbursement for attorneys fees and costs. I do not have Lynda's new email. So I'm forwarding these documents to you. If that's a problem let me know

Sent from my iPad

AA 0756

FILED
Electronically
DV13-00656
2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "3"

EXHIBIT "3"

AA 0757

Exhibit 3

Sent: Monday, March 02, 2020 2:47 PM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: Re: Indemnity

It will be quicker to get the documents from Lucy. Took me a lot of time to locate the documents and make the copies. I don't have that kind of time now to go back and do it all again.

I've already sent correspondence to Lucy explaining the delay. There has been absolutely no prejudice for notifying her after the underlying litigation was mostly concluded. There was absolutely nothing you or anyone could do during the underlying litigation. Also it is common practice to require a lawyer in the underlying litigation to testify first and determine if any errors were made then file a malpractice action. To suggest that I should be deposed for three days and a witness at trial for two days without the benefit of the lawyer to protect our interest and avoid a malpractice claim is simply foolish. The threat of malpractice was a common thread throughout the litigation. My lawyer was there to provide a defense for the pending malpractice action.

The time entries contain attorney-client communications. I am not going to waive the privilege. Lucy has all of the invoices showing what the insurance company paid. I believe it was only \$2500 the rest I had to pay. The information Lucy has is all you need to evaluate the claim. The indemnity agreement is very broad and does not say that the fees and costs must be incurred after the malpractice case is filed.

Sent from my iPad

On Mar 2, 2020, at 8:37 AM, Shawn Meador <smeador@woodburnandwedge.com> wrote:

AA 0758

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

FILED
Electronically
DV13-00656
2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "4"

EXHIBIT "4"

AA 0760

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador
Cc: Todd Torvinen
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRC 16.21

This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because

those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days

Sent from my iPad

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 PIERRE A. HASCHEFF ,
17
18 Plaintiff,
19
20 v.
21
22 LYNDA L. HASCHEFF ,
23
24 Defendant .

CASE NO. DV13-00656
DEPT. NO. 12

25 **REPLY IN SUPPORT OF MOTION FOR CLARIFICATION OR FOR**
26 **DECLARATORY RELIEF REGARDING TERMS OF MSA AND DECREE**

27
28 In his Opposition, Judge Hascheff quibbles, distracts, obfuscates, and seeks to mislead this Court. He cites case law regarding disputes involving commercial litigants that have entirely different factual scenarios, different contractual indemnity language, and that simply do not support the arguments he makes in his Opposition. He fails to thoughtfully address the authority cited by his former wife. He sets up false straw-man arguments and then knocks them down; all while ignoring the merits of this dispute. In doing so, he drives up Ms. Hascheff's legal fees for which he should be responsible.

1 THE MSA LANGUAGE IS UNAMBIGUOUS AND CANNOT
2 BE EXPANDED TO ENCOMPASS JUDGE HASCHEFF'S DEMANDS

3 The indemnity language in paragraph 40 of the Parties' Marital Settlement Agreement
4 ("MSA") is straightforward and unambiguous. It states:

5 In the event Husband is sued for malpractice, Wife agrees to defend and indemnify
6 Husband for one half (1/2) the costs of any defense and judgment.

7 Judge Hascheff spends countless pages arguing why being "sued for malpractice" and
8 the defense of that malpractice action mean so much more than the plain, straightforward
9 language of the contract drafted by his counsel. Without citation to any authority, Judge
10 Hascheff posits that "[O]pposing counsel misunderstands the appropriate protocol in filing a
11 malpractice action." If Judge Hascheff desired that any such protocol should enlarge Ms.
12 Hascheff's liability to indemnify him for his own allegedly negligent conduct, he should have
13 had his counsel include that protocol language in the MSA. He did not. This Court may not
14 enlarge Ms. Hascheff's contractual liability in the guise of interpreting this simple and
15 unambiguous language.

16 The indemnity demand arises out of Judge Hascheff's potential liability for his alleged
17 negligence. The case law Judge Hascheff cited, and on which he relies, provides that under
18 such circumstances, the indemnity clause shall be strictly construed, and enforced only to the
19 extent the terms are "specifically stated within the four corners of the contract." See, Reyburn
20 Lawn & Landscape Designers, Inc. v. Plaster Development Co., Inc., 255 P.3d 268, 274 (Nev.
21 2011); United Rentals Highway Technologies, Inc., v. Wells Cargo, Inc., 289 P.3d 221, 228
22 (Nev. 2012).

23 Thus, if Judge Hascheff is sued for malpractice, his former wife is responsible for one-
24 half of the costs specifically incurred in the defense of that malpractice lawsuit. Period. She
25 did not contractually agree to pay costs or fees he incurred in some other action, even if that
26 27

1 action is tangentially related to a malpractice action and even if he believed incurring fees in
2 that collateral action was reasonable.

3 Nor has Judge Hascheff offered any cogent argument as to why it would be reasonable
4 for this Court to interpret the contract in a way to afford him the implied rights to keep the
5 underlying facts of his alleged negligence and the legal advice he received from the lawyer he
6 hired to protect his interests, secret from her, to make any litigation decisions he believed
7 were in his best interest, and then send his former wife a bill for the fees to his personal
8 lawyer.
9

10 Judge Hascheff suggests that his malpractice carrier's response is one of the protocols
11 he would have this Court graft onto the simple language of the Parties' MSA. He falsely
12 claims that the insurance company appreciated how important it was for him to retain
13 personal counsel to represent him in his role as a percipient witness so the insurance company
14 voluntarily paid \$2,500 of his fees even though it was not contractually obligated to do so.
15 That claim is simply not true or consistent with Judge Hascheff's obligations pursuant to
16 NRCPC Rule 11.
17

18 Judge Hascheff provided counsel with a copy of his malpractice policy. Endorsement
19 No. 3 is entitled "Omnibus Endorsement." A true and correct copy of Endorsement No. 3 is
20 attached as **Exhibit 1 hereto**. Paragraph 4 of Endorsement 3 relates to "Subpoena
21 Coverage."
22

23 As this Court will see, Judge Hascheff's insurance carrier agreed that if he was
24 subpoenaed as a percipient witness in an action related to his legal services, but in which he is
25 not a named party, as here, the insurer will provide coverage up to \$2,500. Thus, his
26 suggestion the insurance company had no obligation to pay this \$2,500 and only did so
27 because his conduct was so reasonable, is simply false.
28

1 To the extent the insurance company's policy has any bearing whatsoever on whether
2 it was or was not reasonable for Judge Hascheff to retain personal counsel to represent him in
3 his role as a percipient witness, the insurance company's position was that the sum of \$2,500
4 was what was reasonable, sufficient and what it was contractually obligated to pay. It paid
5 that sum. More importantly, the legal issue in dispute is not whether Judge Hascheff's
6 unilateral decisions were "reasonable" but whether they are covered by a strict interpretation
7 of the express language of the indemnity clause. They are not.

9 Rather than providing his former wife with accurate information, consulting with her
10 and treating her with respect, Judge Hascheff implies that his former wife should simply trust
11 him. He insists, however, that he has no fiduciary duty to her. Their interests are not
12 identical. Judge Hascheff's lawyer made it very clear that his job was to protect Judge
13 Hascheff, not Ms. Hascheff, and thus, made it clear their interests are not identical. If their
14 interests were identical there would be no basis for insisting that the underlying facts and legal
15 advice he received from his personal lawyer, that he demands his former wife pay for, is
16 confidential from her.

18 Judge Hascheff claims that his retention of personal counsel to represent him in his
19 role as a percipient witness in the collateral lawsuit, in some way, benefited Ms. Hascheff.
20 Therefore, she should pay one-half of his personal legal fees. That position is not supported
21 by the plain language of Paragraph 40. Additionally, neither Ms. Hascheff nor this Court
22 have any ability to evaluate this inadmissible speculation.

24 Judge Hascheff has not admitted that he was negligent in his representation of his
25 former client. He has not disclosed facts that suggest there was a reasonable probability a jury
26 would determine he was negligent, thus exposing him and his former wife to liability. He has
27 not disclosed how his retention of private counsel to protect his interests as a percipient
28 witness impacted or altered his potential risk of liability. He has not disclosed any advice his

1 lawyer gave him that protected Ms. Hascheff from this probable risk. Rather, he insists that is
2 all a secret and that Ms. Hascheff must simply pay half of the costs.

3 Judge Hascheff has not identified a single thing he would have done differently had he
4 not retained personal counsel to represent him as a percipient witness in the collateral lawsuit.
5 Regardless of whether he had counsel or not, he had to produce his file and had to testify
6 truthfully at his deposition and at trial. He has not disclosed how his testimony at deposition
7 or trial would have been one word different than it would have been had he not retained
8 personal counsel. This Court and Ms. Hascheff can reasonably assume that Judge Hascheff
9 would honor his oath to tell the truth regardless of whether he had counsel and can further
10 reasonably assume that his lawyer advised him to testify truthfully.
11

12 Judge Hascheff correctly cites authority that requires this Court to base its decision on
13 a strict interpretation of the indemnity language of the Parties' MSA. A strict interpretation of
14 the indemnity clause in the MSA does not cover these expenses. The indemnity language
15 could have been written to say that Ms. Hascheff will indemnify Judge Hascheff for any fees
16 and costs that he, in his sole and unilateral discretion, believe are reasonable, necessary, and
17 related in any way to any potential malpractice action. That is not the language his lawyer
18 drafted, nor is it the agreement the Parties signed. Ms. Hascheff contractually agreed to pay
19 half the costs of defense of the malpractice action. That action was immediately stayed.
20 There were essentially no fees incurred in the defense of the malpractice action.
21

22 This Court's analysis should end here. The strict interpretation Judge Hascheff
23 acknowledges is appropriate, does not support his position. In his Opposition, however, he
24 makes a variety of arguments, almost as though he were throwing mud against the wall to see
25 if anything would stick.
26

27 Judge Hascheff falsely claims that Ms. Hascheff admitted she is responsible for any
28 fees he incurred after the malpractice action was filed. This Court will look in vain for any

1 such admission. She is not responsible for any fees Judge Hascheff incurred to his personal
2 lawyer in connection with his role as a percipient witness, regardless of when those fees were
3 incurred. She pointed out the unreasonableness and bad faith of Judge Hascheff claiming she
4 was responsible for fees he incurred before he was even sued for malpractice given that the
5 indemnity clause, by its express terms, comes into play, only if he is sued.
6

7 Judge Hascheff insists that when he finally notified his former wife of the situation,
8 his note to her was not misleading. This Court may decide whether it was or was not
9 misleading. At the very least, Judge Hascheff would have to concede it was incomplete.

10 He did not notify her that he had been subpoenaed a year and a half earlier, did not
11 provide her with a copy of the subpoena or with a copy of the malpractice complaint, he did
12 not provide any information about the underlying facts or risk of liability, or that the
13 malpractice action had been stayed. He did not share with her any of the legal advice he
14 received even though he demanded she pay half of the fees he incurred to receive such advice.
15 He did not tell her the fees he demanded she pay were incurred by his personal lawyer he
16 retained to protect his interests in his role as a percipient witness in a collateral lawsuit.
17 Rather, he stated the fees were incurred in the on-going malpractice action.
18

19 Judge Hascheff claims that his former wife has not been harmed by his failure to
20 provide her with full and accurate information in advance of incurring fees he claims she is
21 responsible for. He is mistaken. At a minimum, had he given her the common courtesy of
22 promptly informing her of the circumstances, sharing with her the underlying facts and risks
23 they faced, and consulting with her about the most appropriate way for them to jointly
24 approach the problem, they may have been able to reach agreement to avoid this dispute and
25 all of these fees. Further, his failure to provide her with full and accurate information has
26 forced her to incur substantial legal fees.
27

1 JUDGE HASCHEFF BREACHED HIS COVENANT
2 OF GOOD FAITH AND FAIR DEALING

3 In an attempt to distract this Court from his failure to honor the implied covenant of
4 good faith and fair dealing arising out of the Parties' Marital Settlement Agreement, his
5 failure to act as a fiduciary to his former wife, and his failure to provide her with any
6 meaningful information or consult with her in any effort to make joint decisions, Judge
7 Hascheff argues that this Court may not evaluate any equitable considerations. The case law
8 he cites does not support his argument.

9 Dicta in Rayburn, 255 P.3d at 274, states: "When the duty to indemnify arises from
10 contractual language, it is generally not subject to equitable considerations; 'rather, it is
11 enforced in accordance with the terms of the contracting parties' agreement.'" quoting, Prince
12 v. Pacific Gas & Elec. Co., 45 Cal. 4th 1151, 90 Cal.Rptr.3d 732, 202 P.3d 405, 407 (2007).

13 As noted above, Rayburn, then holds that the contractual language will be strictly construed.
14 In Rayburn, there was no claim that the indemnitee had waived the right to indemnity due to a
15 breach of fiduciary duty or breach of the implied covenants of good faith and fair dealing.

16 Similarly, in Prince, on which Rayburn, relies, there are no similar facts. Rather, in
17 Prince, the claimant sought relief on a theory of implied contractual indemnity. The Court
18 summarized the law of indemnification noting that, in general, there is either contractual
19 indemnity or equitable indemnity and if there is contractual indemnity, the contract controls.
20 Like the Nevada Court, the California Court noted that the contractual indemnity "must be
21 particularly clear and explicit and will be construed strictly against the indemnitee." 202 P.2d
22 at 1158. Again, the Court did not address the issue of waiver.

23 Ms. Hascheff agrees with the rulings in both Rayburn and Prince, that the contractual
24 language must be construed strictly. She is not seeking equitable indemnity from her former
25 husband and thus, the dicta in both cases is inapposite. She does not claim that equity alters
26
27
28

1 the language of the Parties' Agreement. She does assert that by virtue of Judge Hascheff's
2 breach of the implied covenant of good faith and fair dealing and his breach of fiduciary duty,
3 he has waived his right to seek indemnity. He has cited no authority to the contrary.

4 Judge Hascheff oddly cites cases in which the Court held that a party may assert a
5 claim for tortious breach of the implied covenant of good faith and fair dealing only in rare
6 circumstances. Ms. Hascheff has not filed suit against Judge Hascheff asserting such a tort
7 claim, although, under the circumstances of this case she believes the Court would find that
8 there was that special relationship between her and her husband at the time they signed the
9 MSA that would allow her to do so.

10
11 Judge Hascheff attempts to use the fact that his former wife had counsel when she
12 signed the MSA as his insurance policy that it is valid and enforceable. And yet, Ms.
13 Hascheff has not alleged that the MSA is unenforceable. She alleges that he has waived or is
14 estopped from asserting his contractual rights. Judge Hascheff's argument does not change
15 the fact that when she signed the MSA, Ms. Hascheff relied on her husband, the father of her
16 children who had recently become a judge, rather than on her lawyer, who her husband
17 demeaned and undermined. Nor does it change the fact that had Judge Hascheff's lawyer
18 drafted the indemnity clause to give Judge Hascheff the powers and authorities he now claims
19 he has, no independent lawyer would have advised her to sign the Agreement.

20
21 A strict interpretation of the indemnity clause necessarily precludes this Court from
22 accepting Judge Hascheff's argument that this Court may, in the guise of strict interpretation,
23 create an implied term that Judge Hascheff may retain personal counsel to protect his interests
24 as a percipient witness in a collateral lawsuit and then require his former wife to pay half of
25 those fees. Nor does a strict interpretation of the indemnity clause allow this Court to imply
26 that Ms. Hascheff is obligated to pay for legal advice that is kept secret from her.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JUDGE HASCHEFF IS RESPONSIBLE FOR
MS. HASCHEFF'S ATTORNEY'S FEES

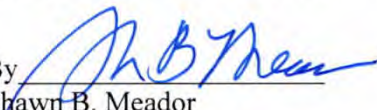
Judge Hascheff's demand for indemnity is without merit. His Opposition to Ms. Hascheff's motion is without merit and unsupported by law or fact. Ms. Hascheff, thus, asks this Court to clarify that the indemnity clause applies only to fees incurred specifically and directly in defense of the malpractice action. She further asks this Court to make a finding that Judge Hascheff has waived his right to seek indemnity with respect to the Jaksick matter. Finally, she requests that this Court require Judge Hascheff to pay the fees and costs she has incurred in connection herewith.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information of any party.

DATED this 13 day of July, 2020.

WOODBURN AND WEDGE

By 
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Reply in Support of Motion for Clarification or Declaratory Relief

Regarding Terms of MSA and Decree

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 13 day of July, 2020



Kelly Albright

EXHIBIT LIST

<u>Exhibit #</u>	<u>Description</u>	<u>No. of Pages</u>
1	Endorsement No. 3	4

FILED
Electronically
DV13-00656
2020-07-13 10:47:39 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7966977 : bblough

EXHIBIT 1

ENDORSEMENT NO. 3
OMNIBUS ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on January 1, 2013, forms part of

Policy No.	[REDACTED]
Issued to	Pierre A. Hascheff CHTD
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that this Policy is amended as follows:

1. Section I., INSURING AGREEMENT B., ADDITIONAL COVERAGES, is deleted in its entirety and replaced with the following:

B. ADDITIONAL COVERAGES

1. **Reimbursement for Lost Earnings Coverage**

The Insurer shall reimburse each Insured up to \$500 for personal earnings actually lost each day or part of a day such Insured, at the Insurer's express request, attends a trial, hearing or arbitration arising from a Claim first made during the Policy Period and reported to the Insurer in accordance with Section IV, Condition I. of this Policy. The maximum amount payable under this Additional Coverage 1. is \$10,000 per Claim and \$30,000 in the aggregate for all Claims, regardless of the number of Claims, the number of Insureds, or the number of days lost or trials, hearings or arbitrations attended. Any payment made by the Insurer under this Additional Coverage 1. shall be in addition to the applicable Limit of Liability and shall not be subject to the Retention.

This coverage shall not apply in the event of a Disciplinary Proceeding.

2. **Disciplinary Proceedings Coverage**

The Insurer will pay on behalf of an Insured, reasonable fees, costs and expenses incurred in responding to a Disciplinary Proceeding initiated against the Insured and reported to the Insurer during the Policy Period or any Extended Reporting Period. The maximum amount payable under this Additional Coverage 2. is \$20,000 per Disciplinary Proceeding and \$60,000 in the aggregate for all Disciplinary Proceedings, regardless of the number of Disciplinary Proceedings or Insureds. Any payment made by the Insurer under this Additional Coverage 2. shall be in addition to the applicable Limit of Liability and shall not be subject to the Retention.

3. **Non-Profit Director and Officer Coverage**

The Insurer will reimburse an Individual Insured lawyer, subject to the Limit of Liability as set forth in Item 3. of the Declarations, all amounts that such Insured becomes legally obligated to pay as Damages and Claim Expenses because of a Claim arising out of a Non-Profit Director or Officer Wrongful Act that is first made during the Policy Period or any Extended Reporting Period.

The coverage provided under this Additional Coverage 3. is excess of, and shall not contribute with, any other insurance plan or program of insurance or self-insurance carried by the **Non-Profit Organization**, and any contribution and indemnification to which the individual Insured lawyer is entitled to from such **Non-Profit Organization**.

The most the Insurer shall pay for Claims for which coverage is provided under this Additional Coverage 3. shall be an amount equal to the lesser of:

- (a) the per Claim Limit of Liability under the **Non-Profit Organization's** Directors and Officers Liability Insurance; or
- (b) the Limit of Liability set forth in Item 3.(a) of the Declarations,

up to the maximum amount of \$500,000 per Claim and in the aggregate for all such Claims. Any payment made by the Insurer under this Additional Coverage 3. shall be part of, and not in addition to, the applicable Limit of Liability.

It is a condition precedent to coverage under this Additional Coverage 3. that:

- (a) such Individual Insured lawyer is serving as a director, officer or committee member of the **Non-Profit Organization** with the express written consent or at the request of the **Named Insured**;
- (b) such **Non-Profit Organization** will have, in full force and effect during the **Policy Period** or any **Extended Reporting Period**, Directors and Officers Liability Insurance with Limits of Liability of at least \$500,000 per claim and in the aggregate for all claims; and
- (c) no more than ten percent (10%) of the **Named Insured's** annual gross revenues are derived directly or indirectly from **Legal Services** performed by any Insured for the **Non-Profit Organization**.

In the event that a **Wrongful Act** or **Related Act** or **Omission** gives rise to a Claim or multiple Claims under both this Additional Coverage 3. and Insuring Agreement I.A. of the Policy, then only one per Claim Limit of Liability and one Retention shall apply to all such Claims.

4. Subpoena Coverage

In the event the Insured receives a subpoena for documents or testimony arising out of **Legal Services**, the Insured may obtain the Insurer's assistance in responding to the subpoena by providing the Insurer with a copy of the subpoena. The Insurer will retain an attorney to provide advice regarding the production of documents, to prepare the Insured for sworn testimony, and to represent the Insured at the Insured's depositions, provided that:

- (a) the subpoena arises out of a lawsuit to which the Insured is not a party; and
- (b) the Insured has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the Insured provided such advice or testimony in the past.

The maximum amount payable under this Additional Coverage 4. is \$2,500, regardless of the number of subpoenas or Insureds. Any payment made by the Insurer under this Additional Coverage 4. shall be in addition to the applicable Limit of Liability and shall not be subject to the Retention.

Any notice the Insured gives the Insurer of such subpoena shall be deemed notification of a potential Claim under Section IV., Condition I. 3.

2. Section IV. CONDITIONS, E. CONSENT TO SETTLE, is deleted in its entirety and replaced with the following:

E. CONSENT TO SETTLE

The Insurer shall not settle any Claim without the consent of the Insured, which consent shall not be unreasonably withheld. If, however, the Insured refuses to consent to any settlement recommended by the Insurer and acceptable to the claimant, then, subject to the Limits of Liability set forth in Item 3. of the Declarations, the Insurer's liability for Damages and Claim Expenses relating to such Claim shall not exceed:

1. the amount for which the Claim could have been settled, plus all Claim Expenses incurred up to the time the Insurer made its recommendation (the "Settlement Amount"); plus
2. fifty percent (50%) of any Damages and/or Claims Expenses in excess of the Settlement Amount.

The remaining fifty percent (50%) of Damages and/or Claims Expenses in excess of the Settlement Amount will be borne by the Insured at its own risk and remain uninsured.

If the Insured refuses to consent to any Claim settlement recommended by the Insurer, as described above, then once the Insurer has paid the Settlement Amount, the Insurer shall have the right to withdraw from the further investigation and defense of such Claim by tendering control of such investigation or defense to the Insured. The Insured agrees, as a condition of the issuance of this Policy, to accept such tender and proceed at its own cost and expense.

If the Named Insured has not paid any premiums due or satisfied any applicable Retentions, the Insurer has the right, but not the obligation, to settle any Claim without the consent of the Insured.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16
17 PIERRE A. HASCHEFF ,

18 Plaintiff,

19 v.

20 LYNDA L. HASCHEFF ,

21 Defendant .

CASE NO. DV13-00656

DEPT. NO. 12

22
23 **OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, OR IN THE**
24 **ALTERNATIVE TO ENFORCE THE COURT'S ORDERS**

25
26 I. INTRODUCTION

27 Judge Hascheff's Motion for Order to Show Cause is without merit. His alternative
28 Motion to Enforce is unsupported by any admissible evidence, without merit and entirely
unnecessary. He should be ordered to pay the fees Ms. Hascheff incurs in responding thereto.

There are no clear and unambiguous "Orders" of this Court that Ms. Hascheff has
allegedly refused to honor. Rather, there is one Order, the Decree of Divorce, that
incorporates the parties' Marital Settlement Agreement ("MSA"). The dispute is whether the
very simple and unambiguous language of the parties' MSA and Decree, requires Ms.
Hascheff to pay the fees Judge Hascheff demands. Because the Decree does not clearly and

1 unambiguously require her to pay those fees, Ms. Hascheff could not be held in contempt as a
2 matter of law.

3 Judge Hascheff asserts that the language of Section 40 clearly and unambiguously
4 obligates his former wife to pay the fees he demands. However, he acknowledges that this
5 Court would have to interpret the language of Section 40 to reach that result. See, Motion at
6 p. 8, lns. 11-14. If interpretation is required to obtain the result Judge Hascheff seeks, the
7 language on which he relies cannot be so clear and unambiguous as to support a contempt
8 motion – no matter how reasonable Judge Hascheff believes his requested interpretation is.

9 Because there is a dispute about the meaning of their contract and the parties'
10 respective rights and obligations, Ms. Hascheff, in good faith, sought clarification so that she
11 would know exactly what her legal obligations are. She would have no reason to do so if her
12 intention would then be to ignore this Court's guidance. Judge's Hascheff's stated beliefs and
13 speculation about his former wife's motives are not accurate nor do they constitute admissible
14 evidence. Ms. Hascheff sought this Court's guidance not to flaunt this Court's Order, but to
15 comply with her legal obligations. Thus, Judge Hascheff's Motion to Enforce is without
16 merit and entirely unnecessary.

17 II. MS. HASCHEFF IS NOT IN CONTEMPT OF COURT

18 The Nevada Supreme Court noted: "an order on which a judgment of contempt is
19 based must be clear and unambiguous, and **must spell out the details of compliance in clear,
20 specific and unambiguous language** so that the person will **readily know exactly what
21 duties or obligations are imposed** on [her]." See, Div. of Child and Family Serv., v. Eighth
22 Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004) quoting, Cunningham v. Eighth
23 Judicial Dist. Court, 102 Nev. 551, 729 P.2d 1328 (1986)(emphasis added).

24 Section 40 of the parties' MSA requires Ms. Hascheff to indemnify her former
25 husband for the defense of the malpractice action. The malpractice action was immediately
26 stayed. Thus, there were essentially no fees incurred in the defense of that malpractice action.

27 Judge Hascheff's legal position, however, is that the language of Section 40
28 specifically and unambiguously states: i) that he may retain personal counsel to represent his

1 interests as a percipient witness in a collateral lawsuit; ii) that his communications with his
2 personal counsel for which he seeks indemnity and the underlying facts about whether he was
3 negligent, are confidential; and iii) that Ms. Hascheff must pay one-half of the fees he
4 incurred for his personal lawyer in that collateral lawsuit. That language cannot be found in
5 Section 40.

6 Judge Hascheff falsely claims that Ms. Hascheff insists that it was unreasonable for
7 him to retain counsel to represent his interests as a percipient witness in the collateral lawsuit.
8 She has not made that claim.

9 Neither Ms. Hascheff, nor her counsel, have any knowledge regarding the underlying
10 facts of Judge Hascheff's alleged negligence. They cannot know whether Judge Hascheff
11 would reasonably be in such fear of his own negligence that it was reasonable for him to
12 retain counsel to protect "his" interests. Nor can they know whether he risked substantial
13 liability, so that retention of personal counsel in his role as a percipient witness in the
14 collateral lawsuit was reasonable or necessary. Judge Hascheff's insistence that this
15 information is confidential necessarily precludes Ms. Hascheff, and this Court, from knowing
16 whether his decision was reasonable and necessary or not.¹

17 But the issue here is not whether Judge Hascheff's actions were reasonable. The issue
18 is whether Section 40 clearly and unambiguously requires Ms. Hascheff to pay Judge
19 Hascheff's fees in his role as a witness in a collateral lawsuit. It does not.

20 Rather, Judge Hascheff asks this Court, in the guise of strictly interpreting the MSA,
21 to imply those terms arise out of the simple language of Section 40. Even if this Court were
22 now to imply those terms, Ms. Hascheff could not be held in contempt of court for not
23 guessing correctly about whether the Court would or would not imply such terms.

24 Rather than quoting the language of section 40 verbatim, in his Motion and in his July
25 8th Declaration, Judge Hascheff states: "Section 40 required Ms. Hascheff to indemnify me
26 for one half (1/2) of the costs of any defense and judgment irrespective of when the fees and
27

28 ¹ Ms. Hascheff's counsel has been called as a percipient witness in a collateral lawsuit that involved work
counsel had done. Counsel did not retain personal counsel to represent him in his role as a percipient witness.
The mere fact that a lawyer is called as a witness related to his or her work does not demonstrate that retention of
counsel was reasonable or necessary.

1 costs are incurred.” And yet, that language, from “irrespective” on, cannot be found in the
2 MSA. Judge Hascheff knew the language he relies on was not in Section 40, so he simply
3 added it to his declaration as if it was.

4 Judge Hascheff elected to add that purported clarifier because he falsely argues that
5 Ms. Hascheff’s position is that she is not responsible for his personal fees as a percipient
6 witness in an collateral lawsuit before he was sued for malpractice, but admits that she is
7 responsible for his personal fees in that collateral suit after he was sued for malpractice. And
8 yet, Ms. Hascheff makes no such admission. See, Ms. Hascheff’s Reply in Support of Motion
9 for Clarification (filed herein on July 13, 2020 and incorporated herein by reference).

10 Judge Hascheff complains that Ms. Hascheff falsely accuses him of keeping secrets
11 from her. At the same time, he continues to insist that his discussions with his personal
12 lawyer and the underlying facts of his alleged negligence, remain confidential. The very point
13 of confidentiality is to allow Judge Hascheff to keep secrets. Similarly, Judge Hascheff
14 stridently complains that he produced all requested documents to Ms. Hascheff’s sister and
15 her counsel, all while insisting that the documents they requested are confidential and will not
16 be produced.

17 Judge Hascheff falsely claims that Ms. Hascheff argues that his malpractice insurance
18 carrier “did not believe the threat of a malpractice claim existed and that is why Judge
19 Hascheff was required to pay most of the fees.” Ms. Hascheff made no such claim. Judge
20 Hascheff, in his declaration, also falsely claims that his insurance carrier was not obligated to
21 pay the \$2,500. See, Ms. Hascheff’s Reply in Support of Motion for Clarification.

22 It is inappropriate for Judge Hascheff to falsely characterize Ms. Hascheff’s legal
23 positions. Cf., NRCP Rule 11; NRPC, Rule 3.3 (Candor Toward the Tribunal); see also,
24 Code of Judicial Conduct, Canons 1 and 2. It is easy to rebut arguments that make no sense
25 and that were not made. A litigant does not need to make such arguments if the facts and law
26 are on his side.

27 Judge Hascheff’s contempt motion has merit only if he can show this Court language
28 in the MSA that spells out the details of Ms. Hascheff’s legal obligation to pay these fees in

1 clear, specific and unambiguous terms, so that she could readily know exactly what duties or
2 obligations are imposed on her. He cannot do so. His Motion for Order to Show Cause is
3 without merit and should be denied.

4 III. MOTION TO ENFORCE IS UNNECESSARY AND MERITLESS

5 Ms. Hascheff has not refused to honor this Court's Order. She has asked this Court
6 for guidance and clarification about what her legal obligations under the Decree are. Judge
7 Hascheff has not offered, nor can he offer, any admissible evidence that Ms. Hascheff has not
8 or will not abide by this Court's Orders. His speculation, conjecture and beliefs are not
9 admissible evidence, and therefore, cannot form the basis for the relief he seeks. See, WDCR
10 Rule 12(1) and 42, DCR Rules 13(5) and 13(6) and NRCR Rule 56(e).

11 Because Judge Hascheff has offered no admissible evidence to support his motion, as
12 required by Local Rules, his motion should be denied.

13 IV. REMAINING CLAIMS AND ARGUMENTS

14 Judge Hascheff then re-hashes many of the same arguments he made in his Opposition
15 to Ms. Hascheff's Motion for Clarification. This Court could undoubtedly evaluate his
16 arguments the first time. His decision to raise these arguments again does nothing other than
17 force his former wife to incur yet more legal fees. Doing so was entirely unnecessary.

18 Judge Hascheff's position forces Ms. Hascheff to "trust" him. At the same time,
19 however, he insists that he has no fiduciary duty to her. His position, taken to its logical
20 extreme, is that Section 40 authorizes him to do anything he wants, no matter how
21 unreasonable or unnecessary, and that Ms. Hascheff would still be responsible for one-half of
22 the costs of his decisions. Were he to admit that there are any limitations on his ability to
23 incur fees for which she is liable, he would, necessarily be admitting the language of Section
24 40 does not clearly and unambiguously pay the fees he demands she pay.

25 Judge Hascheff apparently misunderstood Ms. Hascheff's argument. She does not
26 argue that he breached his fiduciary duty and the implied covenant of good faith and fair
27 dealing by having his lawyer include Section 40 in the MSA at the time of divorce. Her
28 position is that Judge Hascheff has a duty to protect their joint interests, not just to protect his

1 own personal interests. Judge Hascheff has not articulated why he would have no obligation
2 to protect his former wife's interests under these circumstances. If he has that obligation, how
3 would he define his obligation to her other than as a fiduciary? She is not a major corporation
4 or insurance company; she is his former wife who is potentially liable for his negligence.

5 Whether called a fiduciary relationship or confidential relationship, fiduciary-like
6 duties arise when one person reposes confidence in another such that in equity and good
7 conscience, the other is bound to act in good faith and with due regard to the interest of the
8 one imposing the confidence. See, e.g., Long v. Towne, 98 Nev. 11, 639, P.2d 528 (1982);
9 Perry v. Jordan, 111 Nev. 943, 947 P.2d 335 (1995).

10 Ms. Hascheff had no ability to protect herself. Judge Hascheff made the decision not
11 to share the subpoena, the complaint, or the stipulation to stay the malpractice action with her.
12 He chose not to share the underlying facts with her so that she could evaluate her risk. He
13 chose not to consult with her about retaining personal counsel to protect his interests as a
14 percipient witness or whether doing so was reasonable or necessary. He just made all the
15 decisions unilaterally and sent her a bill.

16 Because Judge Hascheff's choice prevented Ms. Hascheff from protecting herself, he
17 necessarily must have an obligation of good faith and to act with due regard for her interests.
18 He could have easily met his obligations by exhibiting simple courtesy. He elected not to do
19 so. Ignoring her, making unilateral decisions, insisting everything is confidential, and then
20 sending her a bill is not good faith, nor does it show due regard for her interests. It shows a
21 complete disregard and contempt for her rights.

22 Once again Judge Hascheff makes the odd argument that the tort of breach of the
23 implied covenant of good faith and fair dealing is only available in rare circumstances. Due
24 to Ms. Hascheff's forced reliance on her former husband, this would be one of those rare
25 circumstances. The fact remains, however, that Ms. Hascheff has not asserted such a tort
26 claim against him. It is a red herring apparently offered to distract the Court from his
27 motion's lack of merit.

28

1 Judge Hascheff makes the irrelevant claim that he was never confronted with a
2 malpractice claim during the marriage. Ms. Hascheff's memory is that there was once a threat
3 of such a claim. The point Ms. Hascheff made in her Motion for Clarification, to which Judge
4 Hascheff is apparently responding, is that the allegations in the malpractice complaint suggest
5 that Judge Hascheff contemporaneously represented multiple clients who had potentially
6 conflicting interests. She asked whether he had obtained written conflict waivers to allow that
7 contemporaneous joint representation. She noted that if he had not obtained written conflict
8 waivers, he was, by definition, aware of a potential claim against him based on the alleged
9 conflict of interests and did not disclose those facts to her at the time of divorce. Judge
10 Hascheff has not addressed this concern. Apparently, it is yet another secret.

11 Judge Hascheff projects that he is offended that Ms. Hascheff keeps claiming that he
12 kept secrets from her. And yet, he continues to insist that the information she requested is
13 confidential. Neither Ms. Hascheff, nor this Court, can tell from his motion whether the
14 alleged "equitable" claims that remain in the Jaksick lawsuit could result in a finding that he
15 committed malpractice. Nor is it clear whether they still face a risk of liability based on his
16 negligence.

17 What is the current status of his potential risk of malpractice liability? Why has Judge
18 Hascheff elected not to share this information with this Court and his former wife who he
19 insists is equally at risk? How is keeping her in the dark consistent with his obligation to act
20 in good faith and with due regard for her interests?

21 V. ATTORNEYS' FEES

22 Judge Hascheff's motion is without merit and entirely unnecessary. His motion serves
23 absolutely no purpose other than to force Ms. Hascheff to incur legal fees. All of the issues
24 addressed in his Motion were fully and fairly briefed in connection with Ms. Hascheff's
25 Motion for Clarification. To the extent that the parties' beliefs and impressions are
26 admissible, Ms. Hascheff's perception is that this Motion is just part of Judge Hascheff's on-
27 going efforts to harass and intimidate her as she feels he has done since the parties'
28 separation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

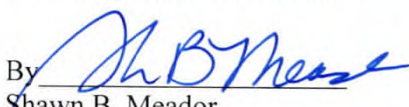
In addition to the prevailing party fee clause, this Court has continuing jurisdiction pursuant to NRS 125.150(3) to award Ms. Hascheff her fees.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information of any party.

DATED this 16 day of July, 2020.

WOODBURN AND WEDGE

By 
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF

vs.

LYNDA L. HASCHEFF

FAMILY COURT
MOTION/OPPPOSITION NOTICE
(REQUIRED)

CASE NO. DV13-00656

DEPT. NO. 12

NOTICE: THIS MOTION/OPPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X .	YES	NO
	1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: July 17, 2020

Signature:

Kelly Albright

Print Name:

Kelly Albright

Print Address:

6100 NEIL ROAD, SUITE 500

Telephone Number:

RENO, NV 89511

775-688-3000

Rev. 10/24/2002

AA 0787

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Opposition to Motion for Order to Show Cause, or in the Alternative to Enforce the Court's Order

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 17 day of July, 2020



Kelly Albright

1 CODE: 2145
2 Todd L. Torvinen, Esq.
3 Nevada Bar No. 3175
4 232 Court Street
5 Reno, NV 89501
6 (775) 825-6066

7
8 IN THE FAMILY DIVISION OF
9 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 PIERRE A. HASCHEFF,
13
14 Plaintiff,

Case No: DV13-00656

15 -vs-

Dept No: 12

16 LYNDA L. HASCHEFF,
17
18 Defendant.

19
20 **REPLY TO OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, OR IN**
21 **THE ALTERNATIVE, TO ENFORCE THE COURT'S ORDERS**

22 COMES NOW, Plaintiff, by and through his attorney, Todd L. Torvinen, Esq.,
23 and hereby files this REPLY TO OPPOSITION TO MOTION FOR ORDER TO SHOW
24 CAUSE, OR IN THE ALTERNATIVE, TO ENFORCE THE COURT'S ORDERS.

25 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
26 affirm that the preceding document does not contain the social security number of any
27 person.

28 Dated: July 24, 2020.

The Law Office of
Todd L. Torvinen, Chtd.

/S/ Todd L. Torvinen
Todd L. Torvinen, Esq.

1 REPLY POINTS AND AUTHORITIES

2 **1. Judge Hascheff Submitted a False Declaration Justifying Rule 11 Sanctions**

3 Defendant, Lynda Hascheff ("Ms. Hascheff"), argues that Plaintiff, Pierre
4 Hascheff ("Judge Hascheff"), falsely stated in his declaration that the insurance
5 company did not have an obligation to pay for the \$2500 subpoena coverage when in
6 fact his endorsement provides the company must contractually provide the subpoena
7 coverage. As a result, she requests NRCP Rule 11 sanctions against Judge Hascheff.
8 See Exhibit 1 attached; Motion for Declaratory Relief ("MDR") Ms. Hascheff Reply to
9 MDR page 3, lines 10-28; page 4, lines 1-8.

10 Lucy Mason (also an attorney) and Ms. Hascheff's counsel were provided a
11 copy of the entire policy and the policy endorsements from the inception and therefore
12 have had ample opportunity to review the policy and the endorsements to determine
13 whether the subpoena coverage applies in this case. They chose not to thoroughly
14 review these documents, or they did and still falsely asserted there was subpoena
15 coverage. In either case this court should impose sanctions for falsely accusing Judge
16 Hascheff of lying in his declaration. See NRCP Rule 11.

17 A review of Section 4 (subpoena coverage) clearly states there are two
18 conditions that must be met before subpoena coverage is provided. See Exhibit 1
19 attached. First, the subpoena must arise from a lawsuit in which the insured is not a
20 party. The second condition, Section 4 (b), arguably did not apply (i.e. Judge Hascheff
21 provided advice in the past to the client) and therefore disqualified the subpoena
22 coverage. More importantly the policy also provides there is no subpoena coverage if
23 the subpoena is issued during the "Extended Reporting Period" which is exactly when
24 this subpoena was issued. The coverage only applies if the subpoena is issued while
25 Judge Hascheff is currently practicing law which he was not since he had already
26 taken the bench in January 2013.

27 Relying on Section 4 (b) noted above, the insurance company initially denied
28 subpoena coverage. See Exhibit 2 attached, the email from the insurance company

1 adjuster, Andy Kenney denying coverage, and the relevant excerpt electronically
2 reproduced below.

3
4 As I mentioned, the ERP is for reporting Claims made during the ERP for acts allegedly
5 committed prior to the policy termination date, which in this case is 1/1/14. You cannot
6 report potential claims during the ERP. Also, there is no coverage for subpoenas received
7 during the ERP, as subpoenas are not Claims.

8
9 The adjuster's email (Exhibit 2) and the excerpt above strongly prove that
10 Judge Hascheff's declaration accurately stated the insurance company's position, yet
11 the insurance company nevertheless paid the \$2500 given the subpoena's direct
12 relationship to the threat of a pending malpractice claim. See Judge Hascheff's Motion
13 for Order to Show Cause ("OSC Motion") page 9, lines 1-11 (defense counsel's invoice
14 clearly shows the company paid the \$2500).

15 It is important to note the clear terms of the endorsement provide that once
16 Judge Hascheff provided notice of the subpoena it was deemed notification of the
17 "potential claim" under the policy. This confirms the existence of a "claim" consistent
18 with MSA Section 40 (if any 'claim' is brought...the other.....shall defend the other
19 against the 'claim'). See Exhibit 5 attached. See also affidavit of Todd Alexander
20 Exhibit 3 attached.

21 This is just one of several unsubstantiated claims made by Ms. Hascheff not
22 based in fact or in law. Also see MSA Section 38- (Release) provides an exception to
23 the parties' mutual release excluding Ms. Hascheff's defense and indemnity obligation
24 in MSA Section 40 for "any malpractice claims" triggering her duty to defend and
25 indemnify. See discussion in Section 3 "Contractual Indemnity" below.

26 **2. Ms. Hascheff Legal Fees and Litigation Conduct**

27 Ms. Hascheff again argues that this OSC Motion and false assertions by Judge
28 Hascheff intentionally drives up her legal fees. She makes this same argument

1 throughout the papers she has filed with this Court. Unfortunately, she neglects to
2 mention that early on Judge Hascheff twice offered to resolve the dispute, first
3 through Lucy Mason, Ms. Hascheff's attorney sister and then again with her attorney
4 on April 26, 2020, before attorney's fees would be incurred or and fully two months
5 before the parties began filing motions. See Exhibit 4 attached. This Exhibit is provided
6 to the Court not to show an agreement, but rather to show Ms. Hascheff's
7 unreasonable conduct. See NRS 48.105 (2).

8 Rather than resolving a dispute of approximately \$5000, Ms. Hascheff
9 embarked on this unfortunate litigation tack where she undoubtedly already incurred
10 fees in excess of \$5000, and likely will incur attorney's fees and costs in multiple or
11 multiples of that amount, all of which result from her highly unfortunate choice, and is
12 certainly not Judge Hascheff's responsibility.

13 Ms. Hascheff also unnecessarily caused Judge Hascheff to incur substantial
14 legal fees. The clear terms of the policy provide there is a total \$10,000
15 retention/deductible. Most, if not all of the fees incurred to date accrued after the filing
16 date of the malpractice complaint December 26, 2018. See Judge Hascheff's
17 declaration attached to his OSC Motion. This means that the parties are very close to
18 the cap (policy deductible) amount and once Ms. Hascheff makes the payment in
19 accordance with the indemnity and defense obligation, in MSA Section 40, her
20 exposure (approximately \$5000) for additional defense costs ceases.

21 Pursuant to the terms of the policy the insurance company must pay for the
22 balance of the defense costs in excess of the deductible. Ms. Hascheff and her
23 counsel understood the benefit of this insurance coverage and limited exposure and
24 that is why the parties agreed they would jointly pay for the extended tail coverage
25 premium. See MSA Section 40; Exhibit 5. They jointly shared in the malpractice
26 coverage premium and the \$10,000 deductible and in turn, received \$2 million of
27 insurance protection against further fees and a potential judgement.

28

1 Quite unexplainably Ms. Hascheff chose instead to force Judge Hascheff (and
2 herself) to needlessly incur substantial legal fees rather than simply pay the modest
3 amount of approximately \$5000 as provided in the MSA (it may be a little more based
4 on policy terms). Judge Hascheff even offered to accept minimal payments without
5 interest and without incurring any legal fees. Ms. Hascheff unreasonably refused. See
6 Exhibit 4 attached. Therefore, any argument that Judge Hascheff is causing these
7 substantial legal fees is false and is of Ms. Hascheff's own doing.

8 **3. Contractual Indemnity.**

9 Ms. Hascheff argues that by Judge Hascheff requesting this Court to interpret
10 the four corners of the MSA by default he admits MSA section 40 is ambiguous
11 otherwise, he would not ask this court to interpret the document. See Ms. Hascheff's
12 Opposition to Motion for OSC page 2, lines 3-16. Interpretation of a contract is a
13 question of law for the court. See *United Rentals Hwy. Tech. v. Wells Cargo* 128
14 Nev.666 at 672, 289 P.3d 221 (2012). This means the court determines if the contract
15 is unambiguous and enforces the terms of the agreement or the court determines the
16 contract is ambiguous (i.e. is subject to more than one reasonable interpretation) and
17 considers extrinsic evidence. Judge Hascheff believes the MSA is clear regarding Ms.
18 Hascheff's obligation to defend and indemnify. However, if this court believes
19 otherwise it may consider extrinsic evidence to determine the intent of the parties. It
20 does not mean, as Ms. Hascheff suggests, when a court considers extrinsic evidence
21 that one side or the other admits it is ambiguous.

22 Ms. Hascheff admits that MSA Section 40 applies in its "entirety" to this dispute.
23 Ms. Hascheff's MDR page 10-11, lines 23-25, lines 1-2; Ms. Hascheff's Opposition to
24 Judge Hascheff's OSC Motion page 7, lines 3-10. She argues that he knew there was
25 a potential claim at the time the parties signed the MSA and he did not disclose a
26 potential malpractice claim five years prior to the action being filed. She argues he
27 should disclose whether he used conflict waivers in the underlying litigation to
28 determine if he breached his disclosures and therefore all of MSA Section 40 applies

1 to this dispute. See Ms. Hascheff's MDR pages 10-11 and Opposition page 7, lines 3-
2 10. The MSA Section 40 clearly provides if any "claim," "action," or "proceeding" well
3 founded or not shall later be brought the indemnitor shall at his or her sole expense
4 defend the other party against said "claim," "action" or "proceeding." The last sentence
5 with respect to malpractice includes claim, action or proceeding and limits Ms.
6 Hascheff's exposure to 1/2 of the cost of any defense and judgment (not covered by
7 insurance).

8 Section 38 of the MSA clearly states that "Except for the obligations contained
9 in or expressly arising out of this Agreement..... " the parties release all interspousal
10 claims that have accrued before or during marriage including claims sounding in tort.
11 The terms of the MSA specifically indicate that this release does not include Wife's
12 obligation to defend and indemnify Husband "for any malpractice claims." Judge
13 Hascheff's deposition is a "proceeding" and the company policy confirmed the
14 subpoena was deemed a "potential claim" and the underlying trust litigation is an
15 "action" consistent with MSA Section 40. See Exhibit 5 attached. Parenthetically, Ms.
16 Hascheff also continues to argue that Judge Hascheff breached a fiduciary duty to her.
17 By definition, this waiver also includes fiduciary duty claims based upon the marriage,
18 unless her assertion is that her representation during the divorce was not independent
19 and/or not competent. See *Cook v. Cook*, 912 P.2d 264, 112 Nev. 179 (Nev. 1996).

20 MSA Section 40 also provides that both parties shall pay 1/2 of the cost of
21 malpractice tail coverage insurance premium. Ms. Hascheff suggests that in order for
22 her to be responsible to defend and indemnify Judge Hascheff for one half the
23 deductible, additional language should have been added to the MSA. MSA Section 38
24 and entire Section 40 when read together requires Ms. Hascheff to pay 1/2 of the cost
25 of any defense and judgment not covered by insurance once a "claim, action or
26 proceeding" occurred. As pointed out above the modest cost of the defense by the
27 terms of the policy is approximately 1/2 of \$10,000 deductible with the insurance
28

1 company picking up the balance. The MSA does not say Judge Hascheff is liable for
2 the entire deductible amount.

3 If the court believes Ms. Hascheff's obligation to defend and indemnify is in fact
4 ambiguous the court is required to consider the parties intent and why they would
5 insert the defense/indemnity into the MSA in the first place. This explanation was
6 provided above. The only evidence in the record of the parties' intent is Judge
7 Hascheff's Declaration. Ms. Hascheff has not filed any affidavits in this dispute
8 regarding the parties' intent.

9 The mere issuance of the subpoena pursuant to the policy provides it
10 constitutes a potential malpractice "claim" which is consistent with MSA Section 38
11 and 40 covering any and all claims whether or not well-founded and irrespective of
12 when the costs and expenses were incurred in defending or responding to such
13 "action" (i.e. the underlying Jackisk action), and "proceeding" (i.e. Judge Hascheff
14 deposition). See Exhibit 1 and 5 attached. In construing the parties' contractual intent,
15 all parts must be considered to determine the intent of any particular part and the
16 whole. *Indenco Inc. v. Evans*, 201 Cal. App. 2d 369 20 Cal Rptr 90 (1962). See also
17 *Royal Indemnity v. Special Services* 82 Nev. 148, 150 413 P. 2d 500 (1966).

18 Ms. Hascheff argues that the caselaw cited by Judge Hascheff are commercial
19 cases, based on different facts and different indemnity and defense obligation
20 language. She also argues *Reyburn* and *United Rentals* supra do not apply because
21 those cases did not involve waivers of an indemnity/defense obligation. Ms. Hascheff's
22 Reply to MDR page 1, lines 19-23; page 7 lines 10-25. The *Reyburn* and *United*
23 *Rentals* cases hold that a contract to indemnify an indemnitee for his or her own
24 negligence must be strictly construed. Here indemnity for malpractice claim by
25 definition covers Judge Hascheff for negligence if any and therefore any ambiguity in
26 the MSA is not construed against Judge Hascheff.

27 The caselaw interpreting indemnity and defense obligations by the indemnitor
28 apply irrespective of the underlying transaction. The court simply interprets the parties'

1 agreement and applies the standard rules. Ms. Hascheff fails to cite any case where a
2 court would distinguish between a contractual indemnity in an MSA from any other
3 indemnity obligation. In fact, a settlement agreement is construed as any other
4 contract and governed by the principles of contract law. See *May vs. Anderson* 121
5 Nev. 668, 119 P. 3d1254 (2005). Indemnity and defense obligations are also
6 interpreted as any other contract. *Reyburn supra* page 344 (duty to defend). *Mt.*
7 *Builders LLC v. Fisher Roofing, Inc.* 219 Ariz. 297 197 P. 3d 758 (2008).

8 Further, the malpractice cases cited in Judge Hascheff's Opposition to MDR
9 clearly provide that a former client cannot bring a malpractice action without first
10 concluding the underlying litigation and typically, if there's a premature malpractice
11 complaint filing, it is stayed until the underlying litigation is complete. When the MSA is
12 read together with the policy, and the malpractice case law once the subpoena was
13 issued, a potential "claim" existed and the defense of the pending "claim" commenced
14 immediately in the underlying litigation (i.e. "action"). This Court does not have to imply
15 additional terms to enforce Section 40 and require payment to but even if these terms
16 were implied, they are consistent with the parties splitting the cost of the deductible
17 including the premium for the policy.

18 The duty to defend is much broader than the duty to indemnify requiring the
19 indemnitor to defend any and all claims even if they are without merit See *Reyburn*
20 *Supra* at p. 345 This duty to defend applies immediately and "from the outset" by virtue
21 of a demand or claim. *United Rental v. Wells Cargo* 128 Nev supra at 676.

22 Pursuant to a contractual duty to indemnify the indemnitee automatically has
23 the right from the outset to tender the defense to the Indemnitor. See *Reyburn supra*
24 127 Nev. at p. 345 and *Crawford v. Weather Shield Mfs.* 44 Cal. 4th 541, 187 P.3d 424,
25 431 (2008). Judge Hascheff could have tendered the defense to Ms. Hascheff
26 pursuant to Section 40 and let her pay for the entire defense of Judge Hascheff with
27 him paying her half the cost. That would make very little sense since he was in a better
28

1 position to defend his advice in the underlying trust litigation. Either way she would be
2 required to pay 1/2 of the costs.

3 Indemnity is not contribution. Indemnity requires one party to pay for all of the
4 costs of a certain event on behalf of another party. *United Rental v. Wells Cargo 128*
5 *Nev supra* at 673. Contribution is the equitable sharing of the same cost. *Medallion*
6 *Development Inc. v. Converse Consultants* 113 Nev. 27 930 P. 2d 115,119 (1997).
7 The MSA provides for indemnity not contribution.

8 Ms. Hascheff's assertion that she has no obligation to pay half the defense
9 costs and/or indemnify until her conditions are met are not expressed in the MSA.
10 Indemnity simply and strictly requires the indemnitee to request payment. It does not
11 require tendering of the subpoena or complaint as conditions to payment like other
12 detailed indemnity/ defense provisions, although such requests are reasonable, and
13 these documents were timely provided by Judge Hascheff. Ms. Hascheff's position
14 that she has some "implied" right or "conditions precedent" to her obligation to pay is
15 entirely inconsistent with the MSA or existing caselaw. Her demand that Judge
16 Hascheff must first provide her with: 1) confidential communications with his attorney,
17 2) facts explaining why he's negligent or not negligent i.e. admit liability, in the prior
18 trial and current equitable claims litigation, and 3) explain his confidential decisions will
19 not be found in the MSA nor any indemnity / defense case law. *United Rentals 128*
20 *Nev. p.676 supra* (indemnitor required to defend and pay the costs whether the
21 underlying litigation has merit or not). Further, as the equity claims in the underlying
22 trust action remain to be adjudicated, this would create an unreasonable risk that such
23 sensitive information would be released to adverse parties and create additional
24 exposure to Judge Hascheff which is not in anyone's best interest particularly since
25 Ms. Hascheff is required to pay half of any excess judgment. Notably, it could also
26 jeopardize Judge Hascheff's insurance coverage if the insurance company determines
27 these disclosures are prejudicial especially given the ongoing nature of the equitable
28 claims in the underlying litigation and malpractice action. Why would any attorney

1 publish this confidential and privileged information while there is pending actions?

2 Finally Judge Hascheff was not just a percipient witness in the trust litigation, but he
3 was continually questioned about his legal opinions and to justify his legal advice.

4 Ms. Hascheff's suggestion that somehow, she was substantially prejudiced
5 because of Judge Hascheff decisions in this case has simply not been shown, nor did
6 she provide any documents or evidence to support this assertion. There is nothing she
7 could have done to improve her situation or protect against or reduce her exposure
8 under the defense and indemnity obligation. She is not an additional insured under the
9 policy and her insurance rights are derivative in nature (i.e. through Judge Hascheff's
10 policy/ legal services) and she has no exposure other than the deductible and except
11 for a potential judgment in excess of policy limits. She was not working as a lawyer in
12 Judge Hascheff's firm nor does she have any information that could assist in the
13 underlying action or malpractice case

14 Unlike *Reyburn*, Judge Hascheff did not wait five years to disclose the potential
15 claim and wait two years after the indemnitee participated in the underlying litigation
16 before the indemnitee tendered the defense to the indemnitor in the ongoing litigation.

17 This court can simply rely on the legal authorities provided by Judge Hascheff in
18 order to make a finding that Ms. Hascheff must pay 1/2 of the defense costs until the
19 deductible is satisfied because to date Ms. Hascheff has not cited any contrary
20 authority. Her unreasonable demands for information as a condition precedent to
21 payment is without merit.

22 Ms. Hascheff argues Judge Hascheff's attorney drafted the MSA and any
23 ambiguity must be construed against the drafter. See MDR Reply page 2, lines 11-16,
24 page 5 lines 15-22. When both parties negotiate the provisions of an agreement and
25 have equal bargaining power the contract will not be construed against the drafter.
26 *Indenco Inc. v. Evans*, 201 Cal. App, 2d P. 376, supra p. 376. In this case both parties
27 negotiated for many months before the MSA was signed with substantial revisions
28 made at the request of Ms. Hascheff and her attorney. Ms. Hascheff makes this claim

1 even though MSA Section 36.1 plainly precludes this claim, as construction against
2 the drafter with regard to any ambiguity is prohibited. See Exhibit 5 attached.

3 **4. Fiduciary Duty and Implied Covenant of Fair Dealing and Good Faith.**

4 Originally Ms. Hascheff argued that Judge Hascheff breached his fiduciary duty
5 and covenant of good faith and fair dealing because: (1) he did not timely disclose the
6 subpoena, (2) the filing of the malpractice action, (3) refused to provide requested
7 documents, (4) made a unilateral decisions without consulting Ms. Hascheff, and (5)
8 did not disclose that the fees were related to the underlying trust litigation and (6) the
9 malpractice litigation was stayed. Ms. Hascheff's MDR page4-5 and pages 8-9.
10 However, Ms. Hascheff also argues that Judge Hascheff has waived and is collaterally
11 estopped from exercising his contractual right to a defense and indemnity because of
12 that breach and therefore, the defense and indemnity caselaw Judge Hascheff cited
13 do not apply. Once again, opposing counsel cites absolutely no authority for this
14 assertion. Ms. Hascheff's Reply to Motion OSC page 7, lines 9-27.

15 Judge Hascheff disclosed all this information to Lucy Mason, Ms. Hascheff's
16 attorney sister, prior to Ms. Hascheff obtaining her counsel. See Exhibit 6. He also
17 provided all of the documents requested within one day except privileged information
18 for the reasons stated above (but did provide detailed time entries from his attorney as
19 requested but redacted for confidential matters).

20 Judge Hascheff provided this court with legal authority where in the Nevada
21 supreme court determined there is no fiduciary duty or an implied covenant good faith
22 and fair dealing in contractual indemnity cases. Yet, Ms. Hascheff continues to make
23 the argument - again without any legal authority. The cases she cited in her reply are
24 not "indemnity/defense" obligation cases. *Long v. Towne*. 98 Nev. 11, 639 P. 2d 528
25 (1982) does not apply since Judge Hascheff did not commit a constructive fraud nor
26 did he have any confidential or fiduciary relationship with Ms. Hascheff when he
27 requested indemnity in January 2020. *Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335
28 (1995) also does not apply because Judge Hascheff did not act with intent to gain Ms.

1 Hascheff's confidence and purported to act or advise her, pretending to have her
2 interests in mind when he requested indemnity per MSA Section 40. His action in the
3 underlying trust case was beneficial to her, and indemnification is simply governed by
4 contract law.

5 Even if there is a fiduciary duty or implied covenant it was not breached under
6 any circumstances particularly since all the information, they requested was provided
7 within one day of the request. Ms. Hascheff argues Judge Hascheff should be
8 collaterally estopped from exercising his defense/ indemnity rights. It is not clear if she
9 is asserting issue preclusion (a form of collateral estoppel, or equitable estoppel,
10 and/or waiver). See *Kahn v. Morse & Mowbray*, 121 Nev. 464 117 p.3d 227 (2005). To
11 constitute equitable estoppel Ms. Hascheff must prove a promise was made to her by
12 Judge Hascheff and that she relied on the representation, which resulted in
13 detrimental reliance and damage *D.E. Shaw Laminar Portfolio Inc., LLC v. Achron*
14 *Corp.*, 570 F. Supp 2nd 1262 (2008); *In Re Harrison Living Trust*, 121 Nev. 217, 112 P.
15 3d 1058 (2005). *Mill-Spec, Inc. v. Pyramid Precast Corp*, 101 Nev. 820 710 P. 2d 1387
16 (1985) (no implied waiver from conduct which does not clearly reflect an intent to
17 waive). There was no conduct or promises or underlying facts which caused Ms.
18 Hascheff to act in a certain way to her detriment causing her damage to create any
19 such defense. In fact, she benefited when the underlying action concluded favorably.

20 In order to constitute a waiver of a right such as an indemnity or defense
21 obligation there must be a known right, a knowing voluntary waiver of that right and
22 intent to relinquish it. *In re Sports Restaurant & Saloon 64 B.R. 447 (D. Nev 1986)*.
23 Again, there are no facts justifying this defense.

24 Ms. Hascheff argues she is not pursuing the tort claim (i.e. breach of implied
25 covenant of good faith and fair dealing). If she is not pursuing the tort claim of a breach
26 of the implied covenant of good faith and fair dealing, then she abandoned and waived
27 it. Contract claims for the breach of the implied covenant typically do not provide the
28 nonbreaching party with her requested remedy.

1 **5. Attorneys Fees**

2 Ms. Hascheff argues she is entitled to attorney's fees as the prevailing party
3 and pursuant to NRS 125.150(3). This statute by its terms do not apply to this dispute
4 over a contractual indemnity. There is no prevailing party provision in the MSA except
5 for Section 35. As a condition precedent to claiming reasonable attorney's fees and
6 costs the prevailing party must first give a 10-day written notice specifying the
7 requirements and an opportunity to cure within the 10-day period. Failure to provide
8 this specific notice and opportunity to cure preclude attorney's fees and costs even if
9 they are the prevailing party. Ms. Hascheff did not provide this 10-day notice only
10 Judge Hascheff did. See Exhibit 7.

11 It should also be noted that Ms. Hascheff's Opposition to the instant Motion
12 does not directly address the fact that Judge Hascheff complied with the 10-day notice
13 requirement as required by Section 35 of the MSA. Postdivorce, the rights and
14 obligations of the parties are governed by contract principles. Judge Hascheff
15 complied with those contractual requirements.

16 For the foregoing reasons, Judge Hascheff moves this Court:

17 1. To issue an order for Ms. Hascheff to show cause as to why she intentionally
18 disobeys this Court's order (Findings of Fact, Conclusions of Law and Decree of
19 Divorce incorporating the terms of the parties' MSA, or in the alternative,

20 2. To enforce the terms of the parties' incorporated MSA, and order the
21 payment of the indemnification, and

22 3. Order Ms. Hascheff pay Judge Hascheff's attorney fees and costs whether
23 this matter proceeds as contempt, or as an order for enforcement upon affidavit from
24 counsel.

25 //

26 //

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
affirm that the preceding document does not contain the social security number of any
person.

Dated: July 24, 2020.

The Law Office of
Todd L. Torvinen, Chtd.

/S/ Todd L. Torvinen
Todd L. Torvinen, Esq.

EXHIBIT INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1	Policy Endorsement	3 pages
Exhibit 2	Email from Andy Kenney	1 page
Exhibit 3	Declaration of Todd Alexander	2 pages
Exhibit 4	Email between Judge Hascheff and Shawn Meador	2 pages
Exhibit 5	MSA	18 pages
Exhibit 6	Email between Judge Hascheff and Lucy Mason	3 pages
Exhibit 7	Email & letter from Judge Hascheff to Shawn Meador	3 pages

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "1"

EXHIBIT "1"

AA 0804

EN
OMN

This Endorsement, effective at 12:01 a.m.

Policy No.	0306-2628
Issued to	Pierre A. Hasch
Issued by	Darwin National

In consideration of the premium charge
follows:

1. Section I., INSURING AGREEMENT
and replaced with the following:

B. ADDITIONAL COVERAGES

1. Reimbursement for

The Insurer shall reimburse the Insured for actual loss, including reasonable expenses incurred, if first made during the period of coverage, in accordance with the terms of the policy. The amount payable under this Additional Coverage shall not exceed the number of claims, the number of hearings or arbitrations, or the number of arbitrations, as set forth in the policy. This coverage shall not apply to claims for which the Insured is liable and shall not apply to claims for which the Insured is not liable.

This coverage shall not apply to claims for which the Insured is liable and shall not apply to claims for which the Insured is not liable.

2. Disciplinary Proceedings

The Insurer will reimburse the Insured for expenses incurred by the Insured in connection with any Extended Reporting Period Coverage, Additional Coverage, or any other coverage provided by the Insurer under this policy, up to the applicable limit of coverage.

3. Non-Profit Directors

The Insurer will reimburse the Insured for expenses incurred by the Insured because of liability as set forth in the policy when the Insured becomes a Non-Profit Director, Officer, or Wrongful Officer, as defined in the policy, and the Insured is covered by the Insurer under this policy.

The coverage provided under this Additional Coverage shall not contribute with any other coverage, including self-insurance, carried by the Insured, or contribution and indemnification provided to or from such Non-Profit Organization.

The most the insurer shall pay under this Additional Coverage shall be:

- (a) the per Claim Limit of Liability for the Organization's Directors and Officers;
- (b) the Limit of Liability for the Insured.

up to the maximum amount of such Claims. Any payment under Coverage 3 shall be part of the Limit of Liability.

It is a condition precedent to this coverage that:

- (a) such individual Insured is a duly elected or appointed member of the Non-Profit Organization at the time of the wrongful act or omission;
- (b) such Non-Profit Organization is insured under the Policy Period or an Officers and Directors Liability Insurance policy and in the aggregate limit of liability;
- (c) no more than ten percent of the damages are covered or performed by any other insurance.

In the event that a Wrongful Act gives rise to a Claim or multiple Claims, the Limit of Liability of this Additional Coverage shall be the Limit of Liability and the Retention shall be the Retention.

Subpoena Coverage

In the event the Insured is required to produce documents or testimony out of Legal Services, the Insured shall be entitled to the assistance of legal counsel in responding to the subpoena. The Insured shall be entitled to the production of documents and testimony, and to represent the Insured in the production of documents and testimony.

- (a) the subpoena arises out of the Insured's business; and
- (b) the Insured has not been subpoenaed in connection with the law enforcement or testimony in the production of documents and testimony.

The maximum amount payable under this Additional Coverage shall be the applicable Limit of Liability and shall not exceed the applicable Limit of Liability.

Any notice the Insured gives the Insurer shall be deemed notification of a potential Claim.

2. Section IV. CONDITIONS, E. CONSENT TO SETTLE with the following:

E. CONSENT TO SETTLE

The Insurer shall not settle any Claim without the Insured's consent. The Insurer's consent shall not be unreasonably withheld. If the Insured consents to any settlement recommended by the Insurer, then, subject to the Limits of Declarations, the Insurer's liability for Damages under such Claim shall not exceed:

1. the amount for which the Claim is settled, plus Expenses incurred up to the time of settlement (the "Settlement Amount"); plus
2. fifty percent (50%) of any Damages in excess of the Settlement Amount.

The remaining fifty percent (50%) of any Damages in excess of the Settlement Amount will remain uninsured.

If the Insured refuses to consent to any settlement recommended by the Insurer, as described above, then, once the Insurer has tendered the Settlement Amount, the Insurer shall have the right to defend and defend of such Claim by tendering costs to the Insured. The Insured agrees, as a condition of such tender and proceeds at its own expense.

If the Named Insured has not paid any premium under this Policy, the Insurer has the right, but not the obligation, to defend and defend of such Claim without the consent of the Insured.

All other terms, conditions and limitations of this Policy shall apply.

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "2"

EXHIBIT "2"

AA 0808

From: Kenney, Andy Andy.Kenney@awac.com
Subject: Jaksick Subpoena; Ref. 2018018714
Date: Aug 21, 2018 at 1:24:02 PM
To: Pierre Hascheff pierre@pahascheff.com

Pierre,

It was a pleasure speaking with you. Attached please find your 2013-2014 professional liability policy as well as Endorsement No. 5, which confirms you purchased an extended reporting period ("ERP") that went into effect upon termination of the policy and expires on 1/1/19.

For ease of reference, the pertinent sections I intend to focus on when we speak again are as follows: Endorsement No. 3, which amends Policy Section I.B.4. – Subpoena Coverage; Policy Section II.C. – Definition of Claim; Policy Section IV.G.2. – Optional Extended Reporting Period, and; Endorsement No. 5. ? step 183

As I mentioned, the ERP is for reporting Claims made during the ERP for acts allegedly committed prior to the policy termination date, which in this case is 1/1/14. You cannot report potential claims during the ERP. Also, there is no coverage for subpoenas received during the ERP, as subpoenas are not Claims.

Finally, I mentioned that I would be happy to refer you to some lawyers on our panel that we work with in the Las Vegas area. There are:

Elizabeth Skane – Skane Wilcox
Joe Garin – Lipson, Nielson
Rob Larson – Gordon & Rees

I am looking forward to continuing our discussion.

Andy

Andy Kenney, Esq.
Senior Claims Analyst
North American Claims Group
Allied World Insurance Company (U.S.), Inc.
1690 New Britain Avenue, Suite 101
Farmington, CT 06032
T: 860-284-4022
F: 860-284-1301
E: Andy.Kenney@awac.com
W: www.awac.com

EXH 2

AA 0809

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "3"

EXHIBIT "3"

AA 0810

DECLARATION OF TODD R. ALEXANDER, ESQ.

STATE OF NEVADA }
COUNTY OF WASHOE } ss.

I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

2. I was retained by Hascheff once he received a multi-page subpoena requesting any and all documents, correspondence, communications etc. with respect to his estate planning and related advice to Samuel Jaksick and related parties.

3. It was prudent on Hascheff's part to retain counsel immediately because the information requested clearly was aimed at undermining his estate plan and advice which could lead to a malpractice action depending on the jury verdict.

4. It was clear that Hascheff was being accused of malfeasance and mishandling the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was their share of the estate.

5. There was also a possible claim by another beneficiary that Hascheff provided incorrect advice to that beneficiary which could result in said beneficiary being sued by his brother and sister with a substantial damage claim against him.

6. Hascheff was clearly at risk depending on the outcome of the underlying litigation.

7. There were two days of depositions and two days of trial testimony, not to mention countless meetings with various attorneys to protect Hascheff's interests.

8. The fees and costs incurred in this case were necessary and reasonable to protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-million dollar claim against him outside the coverage limits of his applicable insurance policy.

9. It should be noted that malpractice actions are not typically filed until the conclusion of the underlying litigation to determine whether the attorney is guilty of malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
EISENBERG
5 PLUMAS ST.
4TH FLOOR
SPRINGFIELD, NV 89519
PHONE: 786-6868

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "4"

EXHIBIT "4"

AA 0813

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador
Cc: Todd Torvinen
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRC 16.21

This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement. Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because

EXH. 4

those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days

Sent from my iPad

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 798478 ~~secretary~~

EXHIBIT "5"

EXHIBIT "5"

MARITAL SETTLEMENT AGREEMENT

This Marital Settlement Agreement is entered into effective September 1, 2013, between **Pierre A. Hascheff** (Husband) and **Lynda Lee Hascheff** (Wife) in order to resolve all issues between them with regard to the dissolution of their marriage. The parties intend this Agreement to be a final and complete settlement of all of their rights and obligations to each other arising out of their marriage, including without limitation, all past and present interspousal claims of any kind that either may have against the other, except as otherwise provided in this Agreement.

Therefore, Husband and Wife agree as follows:

RECITALS

Marriage and Separation

1. Husband and Wife were married on September 8, 1990 in Reno, Washoe County, Nevada, and have thereafter, been married to each other continuously. They have lived separate and apart since April 12, 2012. The duration of the marriage is 23 years.

Grounds for Divorce

2. Irreconcilable differences have arisen between Husband and Wife, which have led to an irreparable breakdown of the marriage. There is no possibility of saving the marriage through counseling or other means, and the parties have agreed to the dissolution their marriage.

Children of Marriage

The parties have no minor children. Wife may claim both children as dependents to the extent she is eligible to do so. Notwithstanding the previous, if wife receives no tax benefit from said dependents, then Husband may claim one or both.

Legal Proceedings

3. The original of this Agreement shall be filed with the Court. The court will be requested to (i) approve the entire Agreement as fair and equitable; (ii) order each party to comply with all of its executory provisions; and (iii) merge the provisions of the Agreement into the Decree of Divorce. This Agreement is not conditioned upon the merger with or entry of the Decree of Divorce.

PA *LL*

SPOUSAL SUPPORT

Payments of Spousal Support

4. Husband shall pay spousal support to Wife in the sum of \$4,400.00 per month for three (3) years until August 30, 2016. Commencing on September 1, 2016, Husband will pay spousal support of \$3,400.00 until he retires. Payments shall be due on or before the first day of the month. The alimony may be readjusted accordingly in the event of changed circumstances. Wife acknowledges the alimony and Wife's PERS survivor benefit is a material consideration and material part of this settlement.

Termination of Spousal Support

5. The payments of spousal support provided in this Agreement, and the court's jurisdiction to order spousal support, shall terminate on the death of either party or on the remarriage of Wife before the above termination date.

Modification of Amount of Spousal Support

6. The amount of the periodic payments of spousal support provided in this Agreement may be modified either upward or downward or terminated by any court in the future on a showing of change of circumstances.

Alimony Tax Treatment

7.1. All payments to or on behalf of Wife for her support, as set forth above, are intended to qualify as alimony under Internal Revenue Code sections 71 and 215, and are to be included in Wife's gross income and deducted by Husband as provided in those Code sections.

7.2. Wife agrees that she shall report as income on her federal and state income tax returns for the year of receipt all sums paid to her, or on her behalf, by Husband under this Agreement, and that she shall pay any resulting taxes due. Wife agrees to indemnify and hold Husband harmless from any federal and state income tax obligation that he may incur by reason of Wife's failure to report as income, and pay the taxes due on, sums paid to her or on her behalf as spousal support under this Agreement.

Spousal Support Provisions Contingent on Tax Laws

8. The parties have agreed on the spousal support provisions of this Agreement in light of the existing federal and state income tax laws, which provide that spousal support is deductible by the payor and taxable to the payee. If the laws are changed so that spousal support payments shall be taxable to the payor and not to payee, the issue of spousal support shall be subject to future negotiation, agreement, or order of court.

Notice of Occurrence of Contingencies

Husband PA Wife JH Page 2 of 16

9. Husband and Wife shall each notify the other promptly and in writing of the happening of any contingency that affects the right or duty of either party to receive or make spousal support payments under the terms of this Agreement. Any overpayments of spousal support made by Husband after the occurrence of such a contingency and before receipt of the notice shall immediately be refunded by Wife, or set off against future payments after first applying the overpayments to any support amounts that are in default.

10. Wife acknowledges Husband has no obligation to provide Wife with health insurance coverage. Husband will cooperate with Wife so she may obtain COBRA insurance coverage within sixty (60) days after entry of decree of divorce. Husband will pay one-half (1/2) the cost of the COBRA premium for a period of eighteen (18) months provided, however, if Wife obtains her own coverage through her employment, the COBRA payments shall cease. Husband's payment share of COBRA premium is not considered alimony. Wife acknowledges Husband can no longer carry health insurance on Wife after the divorce. In lieu of COBRA, Wife may obtain her own health insurance policy in the private market or through the exchange offered through the Affordable Care Act (So-Called Obamacare). In the event she does so, the same terms and conditions shall apply as if she had obtained COBRA continuation coverage.

DIVISION OF PROPERTY

Division of Community Assets

11. Husband and Wife agree that their community property shall be divided between them as set forth below.

11.1 The parties further agree that this Agreement effects a substantially equal division of their community property. Any equalization is forever waived.

11.2 Riverside Drive office and back house located at 1029 and 1029 1/2 will be sold and the net proceeds less expenses, storage and relocation costs will be shared equally. Each party shall bear one half of the tax consequences as a result of the sale.

11.3 The Wife will receive the Alpine Meadows property and the Pineridge property valued at \$360,000.00 and \$120,000.00 respectively. The property at 120 Juanita Drive, Incline Village, Nevada will be sold. Husband will receive the 2555 Manzanita property valued at \$760,000.00. The Arizona property at 2128 Catamaran will be sold. The parties will jointly agree to the initial and any subsequent changes to the listing price and terms of any sale described above. If the parties are unable to agree on the terms of any sale, the respective realtor will mediate the dispute and if the parties still cannot agree, the Court will decide the issue. The net proceeds of any sales described above, after taxes, storages, other expenses and moving costs will be divided equally. Each party reserves the right to use their one-half (1/2) of the net proceeds in a tax free exchange under IRC 1031.

PKA *lh*

Assets Assigned to Wife

12. Husband releases, transfers, and assigns to Wife, as her sole and separate property, all of his right, title, and interest in and to the assets listed below. Husband further agrees to execute all documents that may be required to establish or confirm Wife's sole ownership of all listed assets as described on **Exhibit 1** attached hereto and incorporated by reference.

Assets Assigned to Husband

13. Wife releases, transfers, and assigns to Husband, as his sole and separate property, all of her right, title, and interest in and to the assets listed below. Wife further agrees to execute any and all documents that may be required to establish or confirm Husband's sole ownership of any listed asset as described on **Exhibit 1** attached hereto and incorporated by reference.

Encumbrances and Litigation

14. With regard to all property assigned under this Agreement, except as may otherwise be specifically provided in this Agreement, the assignee spouse assumes all encumbrances and liens on the property and agrees to indemnify and hold the other party free and harmless from any claim or liability that the other party may suffer or may be required to pay because of those encumbrances or liens, including the payment of reasonable attorney fees. Wife and Husband shall refinance their respective properties to remove and release the other from the existing loan and liability within one (1) year.

Insurance

15. The Husband's current group term life insurance with Washoe County and the NY Life insurance shall, as of the effective date of this Agreement, remain with Husband as owner and Wife shall receive 100% of the net proceeds of Husband's Washoe County and NY life insurance policy if ~~Husband dies on or before January 1, 2019.~~ Husband has no obligation to ^{PA} maintain the NY Life policy after December 31, 2014. Husband shall be considered the owner of the insurance policy, and shall pay all policy premiums coming due on and after that date, for so long as the policy is maintained in force. Wife acknowledges Husband's Washoe County policy will terminate if Husband is no longer a county employee.

Social Security

16. The Parties retain their respective Social Security benefits, including any derivative rights to which they might be entitled by virtue of their marriage to each other, as their separate property pursuant to federal law.

Pierre A. Hascheff, Chtd. Profit-Sharing Plan

Husband PA Wife lh Page 4 of 16

17.1. Wife's 1/2 interest in the Pierre A. Hascheff, Chtd., Profit-Sharing Plan shall be implemented by a separate Qualified Domestic Relations Order (QDRO). Wife shall have the right to elect to have her interest in the Pierre A. Hascheff, Chtd., Profit-Sharing Plan allocated to a separate account for her (if permitted by the Pierre A. Hascheff, Chtd., Profit-Sharing Plan); or distributed to her directly; or distributed to an IRA or eligible retirement plan of which she is a beneficiary. If Husband predeceases Wife, payment to Wife shall nonetheless be made under the terms of this Agreement. If Wife dies before full payment to her has been made, the amount unpaid shall be distributed to the beneficiary designated in writing by Wife to the plan administrator of the Pierre A. Hascheff, Chtd., Profit-Sharing Plan in the manner prescribed by the plan administrator, or if no beneficiary has been so designated, to Wife's estate.

17.2. Wife shall report, pay, and be responsible for all taxes due on amounts received by her from the Pierre A. Hascheff, Chtd., Profit-Sharing Plan. Under the Internal Revenue Code, the nonparticipant spouse shall be treated as the distributee of any distribution or payment made to her under a QDRO. As such, all amounts distributed to the nonparticipant from the Pierre A. Hascheff, Chtd., Profit-Sharing Plan are otherwise includible in income shall be taxable to the nonparticipant to the extent not rolled over to another qualified plan or Individual Retirement Account. The Wife shall indemnify Husband for any taxes (including interest and penalties, and "tax on the tax", if any) that he may be required to pay to any taxing authority in connection with any plan distribution. The parties agree to cooperate in filing consistent tax returns in connection with distributions received from Pierre A. Hascheff, Chtd., Profit-Sharing Plan. The court shall reserve jurisdiction to resolve any disputes in connection with any tax return. If either spouse should breach his or her reporting or payment obligations, he or she shall indemnify the other spouse for any cost, fee, or other expense (including but not limited to accounting and attorney's fees) incurred by the other spouse in connection with any audit or examination of the other spouse's tax return, relative to accomplishing the tax result described above.

Husband's PERS Benefits

18.1. Wife is entitled to, and awarded as her separate property, her community interest in and benefits of Husband's Public Employees' Retirement System Nevada ("PERS" or the "System") to which Husband is or may become entitled on account of his past, present, and future employment.

18.2. Husband will elect a form of benefit that would pay to Wife (in the event of Husband's death during pay status prior to that of Wife), a sum equal to the amount that would be paid to Wife under Option 6 with the specific sum payable to Wife if she survives Husband. The Wife's share of Husband's pension during the parties' joint lives shall be determined under the "wait and see" approach described in the *Gemma* and *Fondi* cases. The option 6 survivors amount payable to the Wife upon the death of the Husband shall be the sum of \$3,200.00 per month, adjusted for any COLA increases which occur after the date of the Husband's retirement. The parties agree to equally bear during their joint lives when Husband is retired, the premium cost (the reduction in the monthly benefit) between option 1 and option 6. By way of example, if Husband's unmodified option 1 benefit is \$8,200 per month, and the option 6 benefit is \$7,000 per month, the premium cost is therefore \$1,200 per month. Upon retirement, for example, if Husband receives 60% of the benefit and Wife receives 40% of the benefit, then without

PK
JL

adjustment Husband would be paying 60% of the \$1,200 premium cost per month (\$720); and Wife would be paying 40% of the \$1,200 premium cost per month (\$480). In order to equally divide the premium cost of \$1,200, 10% of the total premium cost (\$120) would be subtracted from Wife's monthly benefit, and \$120 would be added to Husband's monthly benefit during the joint lives of the parties. In the event Wife predeceases the Husband, the benefits revert to the Husband.

18.3. In the event Husband dies before he retires and before starts receiving PERS benefits, Wife shall receive 100% of any survivor benefits provided Husband dies on or before January 1, 2019. If Husband dies after January 1, 2019, but before he retires, Wife will receive 75% and the children will receive 25% of said benefits to be shared equally by the children. Wife and Husband agree to establish an escrow and/or trust for the children's share of said survivor benefits.

18.4. Husband is awarded the balance of any and all the benefits as his separate property from PERS, whether fixed, accrued, contingent or otherwise.

18.5. During the joint lives of the parties, the System shall directly pay Wife her interest in the monthly retirement allowance.

18.6. Wife understands that she will be entitled to a distribution of retirement benefits under PERS although Husband is not yet retired. Wife acknowledges her right to make a "Gemma election" to obtain an immediate distribution of her interest in these retirement benefits on or after the date when Husband is first eligible to draw a retirement allowance from PERS (irrespective of his decision not to retire). Wife hereby waives her right to make a "Gemma election".

18.7. The Parties will enter into a stipulated Qualified Domestic Relations Order to divide the retirement benefits provided for by the Public Employees' Retirement System Nevada. The court shall retain jurisdiction to resolve any disputes concerning the content of the Qualified Domestic Relations Order or to implement or correct any nonqualifying provision by issuing an amended or subsequent order. Until a Qualified Domestic Relations Order is executed by the parties and qualified by the administrators or the court, Husband shall not make or accept any election, or take any action, under the Public Employees' Retirement System Nevada (nor shall the Plan accept any elections) that might adversely affect Wife's interest in the Plan without Wife's prior written consent or further court order upon ninety (90) days' notice to Wife (which notice may be shortened by the court upon a showing of good cause). Pending the preparation of the above order, the parties intend for this Agreement, when incorporated into a Decree of Divorce, to constitute a Qualified Domestic Relations Order for the Public Employees' Retirement System Nevada (if this becomes necessary). The parties stipulate that to the extent that any provision of this Agreement (when incorporated into a Decree of Divorce) pertaining to qualified plans is not found to constitute a Qualified Domestic Relations Order, the court shall retain jurisdiction to implement or correct any nonqualifying provision by issuing an amended or subsequent Qualified Domestic Relations Order.

Division of Personal Property

Husband PA Wife W Page 6 of 16

18.8. The parties will make a division of all remaining items of furniture, furnishings, and personal property to the extent they can agree. Thereafter, items will be allocated in the following manner. The parties shall flip a coin to determine which party will make the first choice of items. The other party will have the second and third choice of items. The party who made the first choice will have the fourth choice, and all choices after that will alternate between the parties until all items are selected. Selections shall be without regard to value. Parties will retain respective furniture in their residence.

Assets Assigned to Parties' Children

19. The following assets shall be owned as follows:

19.1 The 2011 Toyota RAV4 by Wife and insured by and paid for by Wife; and

19.2 The 2008 Jeep by Husband and insured by and paid for by Husband.

19.3 To the extent allowed, Wife's car and the daughter's car (RAV4) will remain under the current umbrella policy and Wife will reimburse Husband their respective share of the total premium.

19.4 Any other assets the parties allocated the children as described elsewhere in this Agreement.

The assets agreed to be owned by the children are not a part of the division of community property of the parties. Assets may be transferred to a minor under the Uniform Gifts to Minors Act, as agreed to by the parties.

Allocation of Community Debts

20. Husband and Wife agree that their community debts and obligations shall be allocated between them as set forth below. The parties further agree that this Agreement effects an equal division of their community debts and obligations.

Debts Assumed by Husband

21. Each party agrees to assume and pay the debts as disclosed on Exhibit 1. Husband further agrees (1) to indemnify and hold Wife harmless from the above debts, and (2) to defend Wife, at his own expense, against any claim, action, or proceeding that is hereafter brought seeking to hold Wife liable on account of these debts, including the payment of reasonable attorney fees incurred by Wife in defense of any such claim, action, or proceeding. Wife agrees Husband may payoff the Sam's Club debt with the community property funds and Wife will obtain her own Sam's Club account card. Husband will retain the current Sam's Club account. Husband will assume his credit card debt.



Debts Assumed by Wife

22. Each party agrees to assume and pay the debts as disclosed on Exhibit 1. Wife further agrees (1) to indemnify and hold Husband harmless from the above debts, and (2) to defend Husband, at her own expense, against any claim, action, or proceeding that is hereafter brought seeking to hold Husband liable on account of these debts, including the payment of reasonable attorney fees incurred by Husband in defense of any such claim, action, or proceeding. Husband will pay Wife's credit card debt up to \$6,000.00 from the parties joint account in accordance with **Exhibit 1**. Wife will assume her credit card debt in excess of \$6,000.00.

Division of Omitted Assets

23. If, after the execution of this Agreement, any asset is discovered to exist that was not listed in and disposed of by this Agreement and that would have been community or quasi-community property of the parties, that omitted asset shall be divided equally between the parties. If, however, the existence of the asset was known to one of the parties at the time of execution of this Agreement, the party with that knowledge shall transfer or pay to the party without knowledge of the asset ("the other party"), at the other party's option, one of the following: (1) if the asset is reasonably susceptible to division, a portion of the asset equal to the other party's interest in it; (2) the fair market value of the other party's interest in the asset on the effective date of this Agreement, plus interest at the legal rate from the effective date to the date of payment; or (3) the fair market value of the other party's interest in the asset on the date on which the other party discovers the existence of the asset, plus interest at the legal rate from the discovery date to the date of payment. This provision will not be deemed to impair the availability of any other remedy arising from nondisclosure of community assets.

Omitted Community Debts

24. The parties acknowledge that they have provided in this Agreement for the payment of all community debts of which each is aware. Any debt, claim, or obligation (including the cost of defending against it) not provided for in this Agreement and unknown by the parties at the time of the preparation of this Agreement, will be deemed a joint community obligation as long as the debt, claim, or obligation arose from the conduct of both parties, or from the conduct of one party and the marital community benefitted from that conduct, occurring during the marriage but before the effective date of this Agreement. If, however, an omitted claim, debt, or obligation arose from the conduct of only one party and the community did not benefit from it, then that claim, debt or obligation will be the sole and separate obligation of that party. This provision will not be deemed to impair the availability of any other remedy arising from nondisclosure of community debts.

Reimbursement and Equalizing Payment

25.1. To equalize the division of the parties' community assets and obligations, Husband agrees to pay Wife the \$82,000.00 equalization payment although the equalization payment shown on

Husband P# Wife JK Page 8 of 16

Exhibit 1 is \$80,697.00. Said equalization payment shall be paid from the net proceeds from the sale of the Incline property provided, however, if the Incline property is not sold within one (1) year of the property's listing date, then Husband will pay Wife the sum of \$82,000.00 equalization payment within ninety (90) days after the expiration of said one (1) year period.

Waivers Regarding Future Earnings and Acquisitions

26. The parties agree and acknowledge that all income, earnings, or other property received or acquired by Husband or Wife on or after September 4, 2013, the date of this agreement, is the sole and separate property of the receiving or acquiring party. Each party does forever waive, release, and relinquish all right, title, and interest in all income, earnings, or other property so received or acquired by the other.

Revocation of Trust

27. The parties have previously created the Pierre and Lynda Hascheff Revocable Trust, dated May 17, 2005, naming Husband and Wife as Trustees. The parties now revoke the Pierre and Lynda Hascheff Revocable Trust and agree that the remaining trust property shall be distributed one-half (1/2) to each according to the terms of this Agreement.

Post-Separation Debts

28. The parties agree that every debt incurred by either party after September 4, 2013, shall be the obligation of the party incurring the debt. The parties further agree that the party incurring a debt after that date shall (1) indemnify and hold the other party harmless from the debt, and (2) defend, at his or her own expense, the other party against any claim, action, or proceeding that is brought seeking to hold the other party liable on account of the debt, including the payment of reasonable attorney's fees incurred by the other party in defending against any such alleged liability.

Warranty of Disclosure of Assets and Debts

29. Each party warrants to the other that (1) all community assets and debts of which he or she has any knowledge have been addressed in this Agreement, (2) that he or she is not possessed of or entitled to any community assets of any kind or description that have not been disposed of by this Agreement, and (3) that he or she has not incurred any community debts or obligations other than those disposed of by this Agreement.

Warranty Against Additional Debts

30. Each party warrants to the other that he or she has not incurred, and will not incur, any debt as to which the other is, or may become, liable, other than those debts addressed in this Agreement.

PAYMENT OF TAXES

Joint Income Tax Returns

31.1. The parties shall file joint federal income tax return for the calendar year ending December 31, 2012.

31.2. Husband shall be responsible for the preparation of the joint tax return. Wife shall cooperate with Husband in the preparation of the joint tax return by providing all information necessary to prepare the joint return (including but not limited to, W-2 forms from all employers, statements of income from any source other than employment, interest from bank accounts, itemized deductions, and tax credits). This information shall be provided no later than thirty days before the deadline date for filing the return with the Internal Revenue Service.

31.3. Husband shall send the completed returns to Wife for approval and signature at least fifteen days before the deadline date for filing the return with the Internal Revenue Service. If the tax return as prepared are not acceptable to Wife, Wife shall notify Husband of her objections within ten days before the filing deadline.

31.4. Should either party fail to cooperate in the preparation and filing of the joint return, that party shall pay any additional tax liability, late penalties, interest, attorney's or accountants' fees, and any other fees or costs incurred as a result of the failure to cooperate.

31.5. Husband shall pay all expenses incurred in the preparation and filing of the joint return.

31.6. Husband and Wife shall equally pay all amounts owing, if any, in connection with the joint income tax return filed under this Agreement.

31.7. If either party fails to comply with the provisions of the paragraphs above, that party shall indemnify the other party for, and hold the other party harmless from, any increased tax liability, late penalties, interest, attorney's fees, accountant's fees, and any other fees or costs incurred by or assessed against the other party as a result of the first party's failure to comply.

Payment of Tax Deficiencies

32.1. Husband and Wife shall be equally responsible for paying all taxes, assessments, liabilities, deficiencies, penalties, interest, and expenses (including, but not limited to, accounting and legal fees) to any federal, state, or local taxing authorities arising out of any review of the parties' personal income tax returns for any period for which the parties filed joint returns.

32.2. Each party shall forward to the other party a copy of any tax deficiency notice or other correspondence or documentation received from any federal, state, or local taxing authority relating to any joint income tax returns. Each party agrees to cooperate fully with the other and to execute any document reasonably requested by the other, and to furnish information and testimony with respect to any tax liability asserted by taxing authorities on any joint return.

32.3. After the Divorce, each party shall be responsible for their own taxes, interest penalties and expenses.

Husband FA Wife JR Page 10 of 16

Allocation of Tax Refund

33. Any tax refund received in connection with any joint income tax return filed by the parties shall be divided equally between the parties.

COSTS AND ATTORNEY FEES

Payment of Attorney Fees and Costs

34. Each party shall be solely responsible for his or her own attorney fees and costs incurred in connection with the negotiation, preparation, and execution of this Agreement and in connection with any proceeding for Dissolution of Marriage that may be commenced by either party. Neither party shall be liable to the other party for any of the other party's attorney fees or costs.

Payment of Future Attorney Fees and Costs to Prevailing Party

35.1. If either party to this Agreement brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

35.2. A party intending to bring an action or proceeding to enforce this Agreement shall not be entitled to recover attorney fees and costs under this provision unless he or she first gives the other party at least 10 written notice before filing the action or proceeding. The written notice shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of the Agreement; (2) the reasons why the moving party believes the subsequent action or proceeding is necessary; (3) whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding; and (4) a period of time within which the other party may avoid the action or proceeding by taking the specified action. The first party shall not be entitled to attorney fees and costs if the other party takes the specified action within the time specified in the notice.

GENERAL PROVISIONS

Representation by Counsel

36.1. Husband has been represented in the negotiation and preparation of this Agreement by his attorney of record Todd L. Torvinen, Esq., Esq. Wife has been represented in the negotiation and preparation of this Agreement by her attorney of record Shawn B. Meador. This Agreement was prepared by Husband's attorney. However, the rule of construction that ambiguities are to be construed in favor of the nondrafting party shall not be employed in the construction of this Agreement.

PS
Sh

Execution of Instruments and Further Assurances

37. Husband and Wife shall each execute and deliver promptly on request to the other any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary or proper to carry out their obligations under this Agreement. If either party fails or refuses to comply with the requirements of this paragraph in a timely manner, that party shall reimburse the other party for all expenses, including attorney fees and costs, incurred as a result of that failure, and shall indemnify the other for any loss or liability incurred as a result of the breach. Further, in case of a breach of the duties imposed by this paragraph, the court may, on ex parte application, order the county clerk to execute any document or other paper on behalf of the breaching party.

Release of All Claims

38. Except for the obligations contained in or expressly arising out of this Agreement, each party releases the other from all interspousal obligations, and all claims to the property of the other or otherwise. This release extends to all claims based on rights that have accrued before or during marriage, including, but not limited to, property and support claims and claims sounding in tort except Wife's obligation to defend and indemnify Husband for any malpractice claims.

Waiver of Rights on Death

39. Each party waives all right to inherit in the estate of the other party on his or her death, whether by testamentary disposition or intestacy, except under the terms of a will executed after the effective date of this Agreement. Each party further waives the right to claim a family allowance or probate homestead, or to act as personal representative of the estate of the other unless nominated by another person legally entitled to the right.

Indemnity and Hold Harmless

40. Except for the obligations contained in or expressly arising out of this Agreement, each party warrants to the other that he or she has not incurred, and shall not incur, any liability or obligation for which the other party is, or may be, liable. Except as may be expressly provided in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission of the other, the warranting party shall, at his or her sole expense, defend the other against the claim, action, or proceeding. The warranting party shall also indemnify the other and hold him or her harmless against any loss or liability that he or she may incur as a result of the claim, action, or proceeding, including attorney fees, costs, and expenses incurred in defending or responding to any such action. In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

Agreement Entered Into Voluntarily

Husband PA Wife WR Page 12 of 16

41. Husband and Wife represent that each, respectively:
- a. Is fully and completely informed as to the facts relating to the subject matter of this Agreement, and as to the rights and obligations of both parties;
 - b. Has entered into this Agreement freely and voluntarily, without any coercion, undue influence, duress, or threat from any person;
 - c. Has carefully read each provision of this Agreement; and
 - d. Fully and completely understands each provision of the Agreement.

Each party acknowledges that this Agreement is fair and equitable to both parties.

Modification and Revocation

42. Except as otherwise provided in this Agreement, the terms of this Agreement may be modified or revoked only by a writing signed by Husband and Wife that expressly refers to this Agreement. The parties understand that this limitation is subject to the power of a court to modify any provisions or orders at any time concerning the custody, visitation, and support of their children.

Effect of Reconciliation

43. If after the effective date of this Agreement, as set forth in Paragraph 44, but before entry of any order or judgment of the court based on it, Husband and Wife acknowledge and agree in writing that their marriage has been restored and that they have mutually rescinded their intent to Dissolution of Marriage, the executory provisions of this Agreement are to remain in force unless revoked or modified.

Effective Date

44. The effective date of this Agreement shall be the date on which it is last executed by either party, as set forth below.

Entire Agreement

45. This Agreement constitutes the entire agreement of Husband and Wife concerning the settlement of their respective rights and obligations arising out of their marriage. It is a full and final settlement of all of those rights and obligations, including spousal support, property rights, liabilities, and other interspousal claims that either may have against the other. This Agreement supersedes any and all other agreements, oral or written, entered into between the parties before the effective date of this Agreement concerning their respective rights and obligations arising out

PSA
llw

of their marriage. There are no enforceable representations or warranties other than those set forth in this Agreement.

Parties Bound

46. Except as otherwise expressly provided, this Agreement shall be binding on, and shall inure to the benefit of, the respective beneficiaries, legatees, devisees, heirs, representatives, executors, administrators, assigns, and successors in interest of Husband and Wife.

Effect of Partial Invalidity

If any provision of this Agreement is held by any court to be invalid, void, or unenforceable, that provision shall be deemed to be struck from the Agreement and the remainder of the Agreement shall be unaffected and shall remain in full force and effect.

Waiver of Breach

47. No waiver of any breach of this Agreement or default under it shall be deemed to be a waiver of any subsequent breach or default of the same or similar nature. No waiver of any rights under this Agreement shall be deemed to be a waiver for all time of those rights, but shall be considered only as to the specific events surrounding that waiver.

Paragraph Titles and Interpretation

48. Paragraph titles have been used throughout this Agreement for convenience and reference only. They are not intended to set forth substantive provisions, and shall not be used in any manner whatsoever in the interpretation of the Agreement.

Governing Law

49. This Agreement has been drafted, and shall be executed, entirely within the State of Nevada and shall be governed by and interpreted and enforced under the law of the State of Nevada as that law stands on the effective date of the Agreement. Interpretation shall not be affected by any changes in that law after that date. The parties understand, however, that child custody and child support orders are subject to state and federal laws that determine and limit state court jurisdiction to make and modify these orders, and do not, by this provision, intend to affect the application of those laws.

Advice Regarding Future Property Rights

50. The parties acknowledge that they have been advised to review their wills, insurance policies, retirement benefit plans, credit cards and other credit accounts and reports, and other matters that they may want to change in view of their dissolution of marriage. The parties

Husband PA Wife JW Page 14 of 16

further acknowledge that they have been advised to review all property rights and employment benefits that have survivorship or inheritance features, such as life insurance policies, pensions, inter vivos trusts, joint tenancies in real and personal property, and bank accounts, to ensure that their present intentions are accurately expressed in the governing instruments.

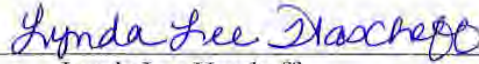
Each undersigned party agrees to the terms and conditions of this Agreement, effective as of the date the last party signs.

DATED this 30 day of Sept, 2013.



Pierre A. Hascheff

DATED this 30th day of Sept, 2013.



Lynda Lee Hascheff

ACKNOWLEDGMENTS

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 30th day of Sept., 2013, personally appeared before me, a Notary Public, PIERRE A. HASCHEFF, personally known (or proved) to me to be the person whose name is subscribed to the above *Marital Settlement Agreement*, who acknowledged that he executed the *Marital Settlement Agreement*.



Jessica J. Fisher
Notary Public

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 25 day of Sept., 2013, personally appeared before me, a Notary Public, LYNDA LEE HASCHEFF, personally known (or proved) to me to be the person whose name is subscribed to the above *Marital Settlement Agreement*, who acknowledged that she executed the *Marital Settlement Agreement*.



Victoria Sayer
Notary Public

Husband PIA Wife LL Page 16 of 16

Section 7: Asset and debt Chart

		COMMUNITY			SEPARATE	
		TOTAL	HUSBAND	WIFE	HUSBAND	WIFE
ASSETS:						
CASH:						
1	PAH Chtd Checking US Bank (1596)	8,400	3,200	3,200		
2	PAH Savings US Bank (6551) & (3704)	34,000	17,000	17,000		
3	Riverside LLC US BAnk (office) (3825)	4,000	2,000	2,000		
4	PAH LLC US Bank(Az house) (8156)	4,400	2,200	2,200		
5	PAH Justice Ct US Bank(6859)	434	217	217		
6	Revocable Trust US Bank (7113) & 9696	210,000	105,000	105,000		
7	Revocable Trust US Bank (9274) & 4371	18,000	9,000	9,000		
8	Lynda checking US Bank	3,000	1,500	1,500		
9	Subtotal	280,234	140,117	140,117	0	0
10 INVESTMENTS:						
11	LPL Financial (stock account) 3439	161,773	80,886	80,887		
12	Subtotal	161,773	80,886	80,887	0	0
13 RECEIVABLES, & DEPOSITS						
14	Acct Rec. (office)	5,000	2,500	2,500		
15	Subtotal	5,000	2,500	2,500	0	0
16 REAL PROPERTY						
17	Incline Condo	560,000	280,000	280,000		
18	6236 Alpine	360,000	0	360,000		
19	905 Pineridge	120,000	0	120,000		
20	1029 Riverside (less sell exp)	500,000	250,000	250,000		
21	2555 Manzanita	760,000	760,000	0		
22	Arizona	520,000	260,000	260,000		
23	Cancun Timeshare	0	0			
24	Subtotal	2,820,000	1,550,000	1,270,000		0
25 AUTOS & RECREATIONAL VEHICLES. Provide make, model, mileage, and vehicle identification number.						
26	2013 Jeep Cherokee	34,000	34,000			
27	2011 RAV 4	20,000	10,000	10,000		
28	2008 Jeep Liberty	12,000	6,000	6,000		
29	2006 Lexus RX330	18,000		18,000		
30	Subtotal	84,000	50,000	34,000	0	0
31 PERSONAL PROPERTY.						
32	Furniture "H" Manzanita	30,000	15,000	15,000		
33	Furniture "W" Alpine	26,000	13,000	13,000		
34	Football & Baseball Tickets	3,000	1,500	1,500		
35	Subtotal	59,000	29,500	29,500	0	0
36 RETIREMENT ACCOUNTS.						
37	ICMA (457 Plan)	11,610	5,805	5,805		
38	PAH Profit Sharing	328,478	164,239	164,239		
39	Lynda IRA	24,720	0	24,720		
40	Pierre IRA	20,114	20,114			
41	1 Yr Group Term Life Insurance (\$250,000) Value 0					
42	Subtotal	384,922	190,158	194,764	0	0
43						
44	TOTAL ASSETS	3,794,929	2,043,161	1,751,768	0	0
45						

PAH
me

Section 7: Asset and debt Chart

		COMMUNITY			SEPARATE	
		TOTAL	HUSBAND	WIFE	HUSBAND	WIFE
46	DEBT					
47	Mortgages, notes & deeds of trust. (Indicate if debt is secured by particular asset above)					
48	Chase (Manzanita)	390,000	390,000	0		
49	Quicken Loan (Alpine)	265,000	0	265,000		
50						
51	Subtotal	655,000	390,000	265,000	0	0
52	Charge Accounts, Credit Cards, medical debts					
53	Chase Card (W)	6,000	3,000	3,000		
54	AMEX (Bus/Office)	5,000	5,000			
55	Visa	0				
56	Mastercard	0				
57	Sam's Club	3,600	1,800	1,800		
58						
59						
60						
61	Subtotal	14,600	9,800	4,800	0	0
62	TOTAL DEBT (add lines 23 and 26)	668,600	399,800	269,800	0	0
63	NET WORTH (TOTAL ASSETS, line 32 MINUS TOTAL DEBT, line 49)	\$3,126,329	\$1,643,361	\$1,481,968	\$0	\$0
	Equalization		(\$80,697)	\$80,697		
	Equalized		\$1,562,664	\$1,562,665		

Handwritten initials/signature

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "6"

EXHIBIT "6"

AA 0835

From: Lucy Mason lucy.masonsen@yahoo.com
Subject: Your demand to Lynda Hascheff
Date: Feb 4, 2020 at 11:42:04 AM
To: Pierre Hascheff pierre@pahascheff.com
Cc: smeador@woodburnandwedge.com

Pierre –

Lynda forwarded me the invoices and letter you sent her in the mail. It appears that you are demanding that she pay half the entire amount billed in the malpractice matter, as opposed to half the amount you have actually paid. The invoices reflect that the insurance company (Allied World) has paid a large amount to date and you have paid \$3,000. There is a handwritten note that you have paid the balance of the remaining bill dated 10/23/19, but there is no canceled check or subsequent invoice reflecting that.

Please provide the following documentation so that we can assess your demand:

1. A copy of the insurance policy pursuant to which you have made a claim
2. All correspondence with your insurance company and adjuster about the claim
3. All detailed billings/invoices you have received to date from Lemons, Grundy or any other firm working on your behalf on this matter, including all time entries by attorneys working on the claim
4. All proof of payment you claim you have made on any bills reflected in 3) above
5. All relevant pleadings in this matter, including but not limited to your response to the complaint

Finally, you had notice of this potential claim for well over 16 months, and undoubtedly much longer. You have a fiduciary duty to Lynda as it relates to this claim to keep her apprised and in the loop. By asking me to send you this note in response to your demand, she is in no way waiving whatever recourse she may have for your breach of that duty. I am helping Lynda as her sister, not as an attorney. Should this require the need for legal services, she will hire an attorney.

Thank you.

Lucy

From: Pierre Hascheff [mailto:pierre@pahascheff.com]
Sent: Sunday, January 26, 2020 7:59 AM
To: Lucy Mason
Subject: Fwd: Attached Image

Here's a copy of the Page requiring reimbursement for attorneys fees and costs. I do not have Lynda's new email. So I'm forwarding these documents to you. If that's a problem let me know

Sent from my iPad

EXH 6

AA 0836

From: Pierre Hascheff pierre@pahascheff.com
Subject: Re: Attached Image
Date: Feb 5, 2020 at 4:41:58 PM
To: Lucy Mason lucy.masonsen@yaho.com

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.

There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to

EXHIBIT b

enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "7"

EXHIBIT "7"

AA 0839

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Sunday, March 01, 2020 11:58 AM
To: Shawn Meador <smeador@woodburnandwedge.com>
Subject: [SPAM - keyword checking] - Indemnity

I was informed by Lucy Mason that I need to contact you regarding my reimbursement for attorneys fees and costs incurred pursuant to section 40 of the settlement agreement dated September 1, 2013. The amount owed to date by Lynda is \$4675.90. I provided all the documentation that Lucy requested which I assume you have which includes the billing invoices. I intend to enforce the settlement agreement because I've been sued for malpractice. A subsequent action or set off is necessary because Lynda has refused to indemnify me pursuant to section 40. We can avoid this action by her simply making the payment referenced above within 10 days of this notice. If the payment is not made within this 10 day I will proceed accordingly. Thank you for your consideration in this matter.
Sent from my iPad

**THE LAW OFFICE OF
TODD L. TORVINEN**

CHARTERED

232 COURT STREET RENO, NEVADA 89501
PHONE: (775) 825-6066 FAX: (775) 324-6063
E-MAIL: ttodd@toddtorvinenlaw.com

Certified Public Accountant (NV)
Certified Estate Planning Law Specialist (EPLS)

May 29, 2020

Via RCMS

Shawn B. Meador, Esq.
Woodburn and Wedge Attorneys
6100 Neil Rd., Suite 500
Reno, NV 89511

Re: Hascheff MSA Indemnity Clause

Dear Mr. Meador:

I write on behalf of my client, Judge Hascheff. Enclosed please find the redacted billing statements from Todd Alexander, Esq., who represents Judge Hascheff regarding the malpractice action. Judge Hascheff previously provided these billing statements to Lucy Mason, Lynda Hascheff's sister. Also enclosed please find Mr. Alexander's Declaration dated April 10, 2020, generally explaining the need for counsel given the real threat and close in time filed malpractice action. The Declaration also describes the significant legal services required in light of the gravity of the threat and the malpractice action.

It is my understanding that on February 5, 2020, Mr. Hascheff emailed your client's sister, Lucy Mason (also an attorney) the: (1) canceled checks for the payment of attorney fees related to the malpractice action, (2) the endorsement number showing malpractice tail coverage, (3), the actual policy and the tail coverage, (4) correspondence between him and the carrier's adjuster, (5) the Hascheff Marital Settlement Agreement, and (6) the 40 page subpoena demanding production of estate planning documents and other documents related to his estate planning advice. I also understand that at or near the same time in early February, Mr. Hascheff emailed Lucy Mason a copy of the malpractice complaint against him filed on December 26, 2018. I further understand that you received those documents.

Judge Hascheff forwarded his email to you dated March 1, 2020, invoking the 10-day notice and the required information triggering liability for attorney fees incurred for enforcement pursuant to Section 35.2 of the MARITAL SETTLEMENT AGREEMENT dated September 1, 2013 ("MSA"). You are probably also aware that MSA Section 40

Exh. 7

AA 0841

Shawn Meador, Esq.
May 26, 2020
Page 2

specifically requires your client to indemnify Mr. Hascheff for "one half (1/2) the costs of any defense and judgment" relating to a malpractice action.

In the March 1, 2020, email to you, Mr. Hascheff indicated as of that date, one half (1/2) of the attorney fees incurred related to the malpractice defense due from Lynda amounted to the sum of \$4675.90. Since March 11, 2020, Mr. Hascheff has incurred fees with my office related to enforcement of Section 40 which now total \$1687.50. As a result, under the terms of the MSA, your client owes the sum of \$6363.40 (\$4675.90 + \$1687.50) to Judge Hascheff. This does not include Mr. Alexander's fees and costs not yet billed in preparation of the Declaration and other time related to the malpractice action.

Hopefully, your client has interest in resolving this matter now. Judge Hascheff is willing to accept payments of \$1500 per month commencing June 15, 2020, until fully paid. Note that Judge Hascheff is also willing to waive interest accrual on the balance due to which he is entitled under NRS 99.040 as an accommodation to your client if your client accepts the terms described above.

Judge Hascheff requests your client's response to me within 10 days of the date of this letter. If necessary, Judge Hascheff will seek enforcement of the MSA indemnity provision thereafter. Thank you for your professionalism and your courtesy in advance.

Respectfully,



Todd L. Torvinen, Esq.

Enclosures

Note: This writing contains an offer in compromise under NRS 48.105. As a result, it may not later be used as prohibited specifically by NRS 48.105.

AA 0842

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,
Plaintiff,
vs.
LYNDA HASCHEFF,
Defendant.

Case No. DV13-00656
Dept. No. 12

**ORDER SETTING MOTION RE: MSA FOR HEARING;
ORDER HOLDING IN ABEYANCE
MOTION FOR ORDER TO ENFORCE AND OR FOR AN ORDER TO SHOW CAUSE**

The Court considers two motions for purposes of this Order.

First, before this Court is Defendant Lynda Hascheff's Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("MSA Motion") filed on June 16, 2020. Plaintiff Pierre A. Hascheff filed an Opposition to Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Opposition to MSA Motion") on July 6, 2020. Ms. Hascheff then filed a Reply in Support of Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Reply to MSA Motion") on July 13, 2020, and the matter was submitted thereafter.

Second, before this Court is Judge Hascheff's Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("OSC Motion") filed on July 8, 2020. Ms. Hascheff filed an Opposition to Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("Opposition to OSC Motion") filed on July 17, 2020. Judge Hascheff then filed a Reply to Opposition to Motion for Order to Show Cause, or in the Alternative, to Enforce the

1 Court's Orders ("Reply to OSC Motion"), and the matter was submitted thereafter.

2 On September 30, 2013, Ms. Hascheff and Judge Hascheff entered into a Marital Settlement
3 Agreement ("MSA") that was approved, adopted, merged and incorporated into the Decree of
4 Divorce ("Decree") on November 15, 2013. Specifically, the MSA contains an indemnification
5 clause in the event of a malpractice claim against Judge Hascheff ("MSA § 40").

6 **A. Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree**

7 In her MSA Motion, Ms. Hascheff asks this Court to enter an Order clarifying MSA § 40
8 that she is only responsible for fees incurred in a malpractice action against Judge Hascheff, and
9 that she is not responsible for the fees or costs he chose to incur to have personal counsel protect his
10 interests in connection with his role as a percipient witness in the Jaksick Action. Moreover, Ms.
11 Hascheff asks that Judge Hascheff be obligated to pay the costs and fees Ms. Hascheff incurred in
12 connection with her attempts to obtain information, respond to his demands and engage in motion
13 practice to establish her rights and obligations.

14 Ms. Hascheff contends on January 15, 2020, Judge Hascheff sent her an undated letter
15 demanding that she indemnify him for legal fees and costs incurred in connection with Judge
16 Hascheff's role as a percipient witness in the Jaksick Action, a lawsuit to which he was not a named
17 party. Ms. Hascheff asserts the language in MSA § 40, by its clear, express, and unambiguous
18 terms, does not require Ms. Hascheff to finance Judge Hascheff's legal fees and costs he elected to
19 incur as a percipient witness. Ms. Hascheff contends Judge Hascheff did not have the right to
20 make the decision to protect his interests as a percipient witness, and then demand that she finance
21 his decision, without fully advising her of the circumstances and gaining her agreement and consent
22 in advance.

23 Ms. Hascheff alleges on December 26, 2018, Judge Hascheff was sued for malpractice by
24 his former client, Todd Jaksick, individually and as trustee of two trusts. Ms. Hascheff claims
25 Judge Hascheff made the deliberate decision not to notify her despite the potential financial risk
26 pursuant to MSA § 40, but rather waited for over a year, until January 15, 2020, to inform her. Ms.
27 Hascheff asserts Judge Hascheff and his former client eventually entered an agreement to
28 stay the malpractice action until the Jaksick Action was resolved.

1 Ms. Hascheff posits MSA § 40 does not require her to finance Judge Hascheff's
2 litigation choices as a percipient witness in a lawsuit to which he was not a party. Ms.
3 Hascheff states if Judge Hascheff believed it would be "helpful " or "prudent " for him to
4 have counsel to assist him as a percipient witness, he had an obligation to consult with
5 her before incurring the expenses while being advised of the underlying facts, the
6 litigation risks and why retention of counsel would be appropriate so that she could
7 make an informed decision about whether to share in the costs .

8 In his Opposition to MSA Motion, Judge Hascheff highlights MSA § 40 must be read in
9 conjunction with the entire section, and MSA § 40 unambiguously indicates that if any claim,
10 action, or proceeding, whether or not well-founded shall later be brought seeking to hold one party
11 liable on account of any alleged debt, liability, act, or omission the other party at his or her sole
12 expense must defend the other against said claim, action or proceeding. Judge Hascheff asserts
13 MSA § 40 requires a party must also indemnify the other and hold him or her harmless against any
14 loss or liability that he or she may incur as a result of the claim, action or proceeding including
15 attorney's fees, costs and expenses incurred in defending or responding to such action. Judge
16 Hascheff also notes as a subset and part of that all-encompassing language providing a full defense
17 and complete unconditional indemnification a provision was added that in the event said claim,
18 action or proceeding, involved a malpractice action whether or not well-founded, it obligated the
19 other party to pay only one-half the defense costs and indemnify only one-half of any judgment if
any, entered against said party.

20 Judge Hascheff maintains MSA § 40 does not include a notice provision. Judge Hascheff
21 maintains it was critical to defend the claims in the trust action as they likely become res judicata
22 and collateral estoppel defenses in the malpractice action and eliminate Ms. Hascheff being
23 required to pay one-half of the likely much higher defense costs and the judgment. Judge Hascheff
24 claims he needed to engage counsel early to address and cut off any possible claims arising out of
25 or determined in the underlying litigation should not be subject to question under the circumstances.
26 Judge Hascheff alleges he did not keep the potential for a malpractice claim secret from Ms.
27 Hascheff because he believed that the underlying trust action would be resolved, and the
28 malpractice action filed in December 2018 would eventually be dismissed.

1 Judge Hascheff contends the fact that Allied World insurance company picked up the
2 defense and paid defense fees in the trust litigation of \$2,500, although not required under his
3 insurance policy, conclusively shows that Judge Hascheff's involvement in the underlying trust
4 case primarily involved potential malpractice claims.

5 Judge Hascheff asserts it is not uncommon for an indemnitee to remain involved for several
6 years in the underlying litigation and then once litigation is concluded and the damages are
7 ascertained; then and only then will the indemnitee notify the indemnitor for of the obligation to
8 pay said damages. Therefore, Judge Hascheff claims he did not breach his fiduciary duty, if any, by
9 waiting to inform Ms. Hascheff of the malpractice action until after the jury decided the legal
10 claims in the underlying trust litigation.

11 Judge Hascheff also argues Ms. Hascheff has violated Section 35 ("MSA § 35") which
12 clearly provides that any party intending to bring an action or proceeding to enforce the MSA shall
13 not be entitled to recover attorney's fees and costs unless she first gives the other party at least 10
14 days written notice before filing the action or proceeding.

15 In her Reply to MSA Motion, Ms. Hascheff emphasizes a strict interpretation of MSA § 40
16 does not cover Judge Hascheff's incurred legal expenses. Ms. Hascheff states the indemnity
17 language could have been written to say that she will indemnify Judge Hascheff for any fees and
18 costs that he, in his sole and unilateral discretion, believe are reasonable, necessary, and related in
19 any way to any potential malpractice action, but that is not the language his lawyer drafted, nor is it
20 the agreement the parties signed. As a result, Ms. Hascheff states she contractually agreed to pay
21 half the costs of defense of the malpractice action which was immediately stayed with no fees
22 incurred.

23 Ms. Hascheff asserts had Judge Hascheff given her the common courtesy of promptly
24 informing her of the circumstances, sharing with her the underlying facts and risks they faced, and
25 consulting with her about the most appropriate way for them to jointly approach the problem, they
26 may have been able to reach agreement to avoid this dispute and all of these fees.

27 **B. Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders**

28 In his OSC Motion, Judge Hascheff moves this Court: (1) To issue an order for Ms.
Hascheff to show cause as to why she intentionally disobeys the Decree; (2) To enforce the terms of

1 the parties' incorporated MSA, and order the payment of the indemnification; and, (3) Order Ms.
2 Hascheff pay Judge Hascheff's attorney fees and costs whether this matter proceeds as contempt, or
3 as an order for enforcement upon affidavit from counsel.

4 Judge Hascheff asserts Ms. Hascheff chooses to willfully disobey the Decree and MSA by
5 making "ill-advised and even nonsensical arguments" in her MSA Motion as a course of conduct to
6 "gain leverage and delay payment."

7 Judge Hascheff states in the event the Court determines Ms. Hascheff's actions do not rise
8 to the level of contempt, Judge Hascheff asks the Court to enforce its orders by requiring Judge
9 Hascheff to pay the required one half indemnification amount to Judge Hascheff in the sum of
10 \$4,924.05 (plus a percentage of any later accrued and accruing fees and costs) pursuant to MSA §
11 40, and award Judge Hascheff attorney's fees pursuant to MSA § 35.

12 In her Opposition to OSC Motion, Ms. Hascheff contends there are no clear and
13 unambiguous Orders of this Court that she has allegedly refused to honor. Ms. Hascheff
14 emphasizes the dispute is whether the simple and unambiguous language of the parties' MSA and
15 Decree, requires Ms. Hascheff to pay the fees Judge Hascheff demands.

16 Ms. Hascheff asserts since the Decree does not clearly and unambiguously require her to
17 pay those fees, Ms. Hascheff could not be held in contempt as a matter of law. Ms. Hascheff
18 asserts if interpretation is required to obtain the result Judge Hascheff seeks, the language on which
19 he relies cannot be so clear and unambiguous as to support a contempt motion - no matter how
20 reasonable the requested interpretation. Ms. Hascheff claims since there is a dispute about the
21 meaning of their contract and the parties' respective rights and obligations, Ms. Hascheff, in good
22 faith, sought clarification through her MSA Motion so that she would know exactly what her legal
23 obligations are.

24 In his Reply to OSC Motion, Judge Hascheff maintains rather than resolving a dispute of
25 approximately \$5,000, Ms. Hascheff has embarked on an unfortunate litigation track where she
26 undoubtedly already incurred fees in excess of \$5,000, and likely will incur attorney's fees. Judge
27 Hascheff contends Ms. Hascheff also unnecessarily caused him to incur substantial legal fees, and
28 has even offered to accept minimal payments without interest and without incurring any legal fees.

Judge Hascheff posits Ms. Hascheff fails to cite any case where a court would distinguish

1 between a contractual indemnity in an MSA from any other indemnity obligation, and a settlement
2 agreement is construed as any other contract and governed by the principles of contract law. Judge
3 Hascheff maintains Ms. Hascheff's assertion that she has no obligation to pay half the defense costs
4 and/or indemnify until her conditions are met are not expressed in the MSA, and Ms. Hascheff's
5 position that she has some "implied" right or "conditions precedent" to her obligation to pay is
6 entirely inconsistent with the MSA or existing caselaw.

7 Law

8 **A. Declaratory Relief Standard**

9 A party must meet four elements before declaratory relief can be granted:

- 10 1) there must exist a justiciable controversy; that is to say, a
11 controversy in which a claim of right is asserted against one who
12 has an interest in contesting it; (2) the controversy must be
13 between persons whose interests are adverse; (3) the party seeking
14 declaratory relief must have a legal interest in the controversy,
that is to say, a legally protectable interest; and (4) the issue
involved in the controversy must be ripe for judicial
determination.

15 *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1291 (2016).
16 Moreover, any person whose rights, status, or other legal relations "are affected by a statute . . . may
17 have determined any question of construction" of that statute. NRS 30.040(1); *Prudential Ins. Co.*
18 *of Am. v. Ins. Comm'r*, 82 Nev. 1, 5, 409 P.2d 248, 250 (1966) (declaratory relief is available when
19 a controversy concerning the meaning of a statute arises). "Whether a determination is proper in an
20 action for declaratory relief is a matter within the trial judge's discretion that will not be disturbed
21 on appeal unless abused." *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 68, 506 P.2d
22 426, 428 (1973).

23 **B. Interpretation of MSA Standard.**

24 A settlement agreement, which is a contract, is governed by principles of contract law.
25 *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). As such, a settlement
26 agreement will not be an enforceable contract unless there is "an offer and acceptance, meeting of
27 the minds, and consideration." *Id.* Generally, when a contract is clear on its face, it 'will be
28 construed from the written language and enforced as written.'" *Buzz Stew, LLC v. City of N. Las*

1 Vegas, 131 Nev. 1, 7, 341 P.3d 646, 650 (2015) (citing *Canfora v. Coast Hotels & Casinos, Inc.*,
2 121 Nev. 771, 776, 121 P.3d 599, 603 (2005)). The court has no authority to alter the terms of an
3 unambiguous contract. *Canfora*, 121 Nev. at 776, 121 P.3d at 603.

4 Whether a contract is ambiguous likewise presents a question of law. *Galardi v. Naples*
5 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (citing *Margrave v. Dermody Props.*,
6 110 Nev. 824, 827, 878 P.2d 291, 293 (1994)). A contract is ambiguous if its terms may reasonably
7 be interpreted in more than one way, but ambiguity does not arise simply because the parties
8 disagree on how to interpret their contract. *Id.* (citing *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123
9 Nev. 212, 215, 163 P.3d 405, 407 (2007); *Parman v. Petricciani*, 70 Nev. 427, 430–32, 272 P.2d
10 492, 493–94 (1954)).

11 Marital agreements are “enforceable unless unconscionable, obtained through fraud,
12 misrepresentation, material nondisclosure or duress.” *Furer v. Furer*, 126 Nev. 712, 367 P.3d 770
13 (2010) (citing *Sogg v. Nevada State Bank*, 108 Nev. 308, 312, 832 P.2d 781, 783–84 (1992)).

14 After merger, the district court may enforce the provisions of the divorce decree by using its
15 contempt power. *Friedman v. Friedman*, 128 Nev. 897, 381 P.3d 613 (2012) (citing *Hildahl v.*
16 *Hildahl*, 95 Nev. 657, 662–63, 601 P.2d 58, 61–62 (1979)). The district court may interpret the
17 language of the divorce decree in order to resolve ambiguity. *Id.* (citing *Kishner v. Kishner*, 93 Nev.
18 220, 225, 562 P.2d 493, 496 (1977)).

19 **C. Order to Show Cause for Contempt of Court Standard.**

20 Pursuant to NRS 22.030(2), if a contempt is not committed in the immediate view and
21 presence of the court or judge at chambers, an affidavit must be presented to the court or judge of
22 the facts constituting the contempt, or a statement of the facts by the masters or arbitrators. The
23 requirement of an affidavit is confirmed by case law, specifically requiring an affidavit must state
24 facts specific enough to allow the Court to proceed to be submitted at the Contempt proceeding,
25 which is necessary to give the court subject matter jurisdiction. *See Awad v. Wright*, 106 Nev. 407,
26 794 P.2d 713 (1990) (overruled on other grounds); *Philips v. Welch*, 12 Nev. 158 (1887); *Strait v.*
27 *Williams*, 18 Nev. 430 (1884). Contempt statutes are to be strictly construed based upon the
28 criminal nature of a contempt proceeding. *Ex Parte Sweeney*, 18 Nev. 71 (1883).

1 fees and costs if the other party takes the specified action within the
2 time specified in the notice.

3 ...

4 37. Husband and Wife shall each execute and **deliver promptly on**
5 **request to the other any and all additional papers, documents,**
6 **and other assurances, and shall do any and all acts and things**
7 **reasonably necessary or proper to carry out their obligations**
8 **under this Agreement.** If either party fails or refuses to comply with
9 the requirements of this paragraph in a timely manner, **that party**
10 **shall reimburse the other party for all expenses, including**
11 **attorney fees and costs, incurred as a result of that failure, and**
12 **shall indemnify the other for any loss or liability incurred as a**
13 **result of the breach.** Further, in case of a breach of the duties
14 imposed by this paragraph, the court may, on ex parte application,
15 order the county clerk to execute any document or other paper on
16 behalf of the breaching party.

17 ...

18 40. Except for the obligations contained in or expressly arising out of
19 this Agreement, **each party warrants to the other that he or she**
20 **has not incurred, and shall not incur, any liability or obligation**
21 **for which the other party is, or may be, liable.** Except as may be
22 expressly provided in this Agreement, **if any claim, action, or**
23 **proceeding, whether or not well founded,** shall later be brought
24 seeking to hold one party liable on account of any alleged debt,
25 liability, act, or omission of the other, the warranting party shall, at
26 his or her sole expense, defend the other against the claim, action, or
27 proceeding. The warranting party shall also indemnify the other and
28 hold him or her harmless against any loss or liability that he or she
may incur as a result of the claim, action, or proceeding, including
attorney fees, costs, and expenses incurred in defending or
responding to any such action. In the event Husband is sued for
malpractice, Wife agrees to defend and indemnify Husband for one
half (1/2) the costs of any defense and judgment Husband may
purchase tail coverages of which Wife shall pay one half (1/2) of such
costs.

24 The Court highlights aspects of these sections to guide counsel where the Court is directing
25 its attention. The Court is of the impression MSA § 40 does encompass legal fees incurred by
26 Judge Hascheff as a witness in the Jaksick Action, and the stayed lawsuit where he is sued
27 individually. However, the Court takes issue with Judge Hascheff's unilateral decision to
28 not provide notice to Ms. Hascheff of his exposure to malpractice liability until January

1 2020.

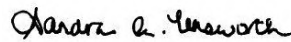
2 Counsel should be prepared to argue, *inter alia*, the following issues: (1) whether notice
3 pursuant to MSA § 35 was properly provided by both parties to collect attorney's fees regarding
4 enforcement of the MSA; (2) whether both parties promptly delivered information to each other
5 pursuant to MSA § 37 to effectuate, specifically, MSA § 40; and (3) whether MSA § 40 contains an
6 ongoing obligation for Judge Hascheff to provide notice to Ms. Hascheff of any malpractice claim,
7 action, or proceeding.

8 Furthermore, the disposition of the OSC Motion is inextricably linked to the ruling in the
9 MSA Motion. As a result, the Court shall hear argument on the OSC at the same time and hold in
10 abeyance its ruling on the OSC Motion until adjudication of the MSA Motion.

11 Counsel for the parties shall contact Department 12's Judicial Assistant, Amy Hodgson, to
12 set the matter at amy.hodgson@washoecourts.us within ten days of the date of this order.

13 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

14 DATED this 9th day of September, 2020.

15 

16 _____
17 Sandra A. Unsworth
18 District Judge

19 DV13-00656

20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on September 9, 2020, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**SHAWN MEADOR, ESQ., for LYNDA HASCHEFF
TODD TORVINEN, ESQ., for PIERRE HASCHEFF**



Judicial Assistant

1 John A. Collier, Esq.
Nevada Bar No. 4570
2 **KALICKI COLLIER, LLP**
401 Ryland Street, Suite 200
3 Reno, Nevada 89502
Telephone: (775) 852-2600
4 Facsimile: (775) 852-2642
Email: *jac@kalickicollier.com*
5 *Attorneys for Luke Jaksick*

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8
9 In the Matter of the Administration of the
10 SSJ'S ISSUE TRUST,

Case No. PR17-00445
Dept. No. 15

11
12 In the Matter of the Administration of the
13 SAMUEL S. JAKSICK, JR. FAMILY
TRUST,

Case No. PR17-00446
Dept. No. 15

14 WENDY JAKSICK,

15 Respondent and Counter-Petitioner

16 v.

17 TODD B. JAKSICK, INDIVIDUALLY, AS
18 CO-TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST, AND AS
19 TRUSTEE OF THE SSJ'S ISSUE TRUST;
MICHAEL S. KIMMEL, INDIVIDUALLY
20 AND AS CO-TRUSTEE OF THE SAMUEL
S. JAKSICK, JR. FAMILY TRUST; AND
21 STANLEY S. JAKSICK, INDIVIDUALLY
AND AS CO-TRUSTEE OF THE SAMUEL
22 S. JAKSICK, JR. FAMILY TRUST; KEVIN
RILEY, INDIVIDUALLY AND AS
23 FORMER TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST AND
24 TRUSTEE OF THE WENDY A. JAKSICK
2012 BHC FAMILY TRUST,

25 Petitioners and Counter-Respondents.

26
27 Defendants.

**LUKE JAKSICK'S OPPOSITION
TO PETITION FOR INSTRUCTIONS
REGARDING SETTLEMENT
AGREEMENT**

1 COMES NOW LUKE JAKSICK (“Luke”), by and through his counsel, John A. Collier
2 of Kalicki Collier, LLP, and hereby submits his Opposition to Petition for Instructions filed
3 herein by Todd Jaksick as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust on November 3,
4 2020. This Opposition is made and based upon the following Points and Authorities. Luke also
5 joins in Wendy A. Jaksick’s Opposition to Petition For Instructions Regarding Settlement
6 Agreement filed herein and incorporates her arguments as if set forth in full herein.

7 **POINTS AND AUTHORITIES**

8 Luke Jaksick is the son of Wendy Jaksick and the grandson of Samuel S. Jaksick, Jr.
9 Luke is a named beneficiary of the Second Amendment to the Samuel S. Jaksick, Jr. Family
10 Trust Agreement Restated Pursuant to the Third Amendment dated June 29, 2006, executed by
11 Samuel S. Jaksick, Jr. on December 10, 2012 (the “Family Trust”). Paragraph 3.2 of the Second
12 Amendment to the Restated Family Trust provides:

13 “The Trustee shall distribute from Wendy Ann Jaksick Smrt’s one-
14 third (1/3) share of the trust estate (a) twenty percent (20%) to the
15 Settlor’s Irrevocable Grandchild Trust No. 2 for the benefit of Luke
Jaksick....”

16 The Settlement Agreement, if approved as requested by Todd Jaksick in his Petition of
17 Instructions filed herein on November 3, 2020, is the result of self-interest and the self-
18 preservation of Todd Jaksick and Stan Jaksick, is not in the best interest of the other beneficiaries
19 of the Family Trust, and will deprive Luke of his beneficial interest in the assets of the Family
20 Trust. As stated above, Luke’s beneficial interest is 20% of Wendy’s 1/3 interest in the Family
21 Trust estate. Luke joins in Wendy’s Opposition to Petition for Instructions and incorporates her
22 arguments herein as if set forth in full. Luke submits this Opposition pursuant to the Court’s
23 invitation at the hearing held herein on October 14, 2020, and makes it known to all that he does
24 not consent to the validity of the Settlement Agreement, but rather asserts the invalidity of the
25 Settlement Agreement. *See Transcript of Proceedings, Oral Arguments*, dated October 14, 2020,
26 Page 80, Lines 12-20.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Luke Jaksick respectfully requests that the Court refuse to approve the Settlement Agreement, find that the Settlement Agreement is unenforceable, and deny all other relief requested in the Petition for Instructions filed herein on November 3, 2020.

This document does not contain the social security number of any person.
DATED this 17th day of November, 2020.

KALICKI COLLIER, LLP



John A. Collier
Nevada State Bar No. 4570
Attorneys for Luke Jaksick

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 16, 2020, I electronically filed *Luke Jaksick's Opposition*
3 *to Petition for Instructions Regarding Settlement Agreement* with the Clerk of the Court using the
4 electronic filing system, which will send a notice of electronic filing to the following:

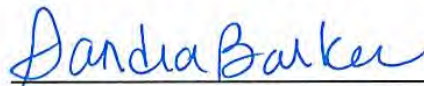
5 *Adam Hosmer-Henner, Esq. for Stanley Jaksick*
6 *Therese Shanks, Esq. for Todd B. Jaksick*
7 *Caroline Renner, Esq. for Todd B. Jaksick, Kevin Riley, Michael S. Kimmel*
8 *Mark Connot, Esq. for Wendy Jaksick*
9 *Philip Kreitlein, Esq. for Stanley Jaksick, Samuel S. Jaksick, Jr. Family Trust*
10 *Stephen Moss, Esq. for Stanley Jaksick, Samuel S. Jaksick, Jr. Family Trust*
11 *Sarah Ferguson, Esq. for Stanley Jaksick, SSSJ's Issue Trust, Samuel S. Jaksick, Jr.*
12 *Family Trust*
13 *Donald Lattin, Esq. for Todd B. Jaksick, Kevin Riley, Michael S. Kimmel*
14 *Kent R. Robison, Esq. for Todd B. Jaksick, et al.*

15 I also certify that a true and accurate copy of the foregoing was also sent *via* U.S. Mail,
16 first-class, postage prepaid, to the following:

17
18
19
20
21
22
23
24
25
26
27
28
Alexi Smrt
3713 Wrexham
St. Frisco, TX 75034

R. Kevin Spencer, Esq.
Spencer & Johnson, PLLC
500 N. Akard Street, Suite 2150
Dallas, Texas 75201

KALICKI COLLIER, LLP



Sandra Barker, Employee

1 MARK J. CONNOT (10010)
2 **FOX ROTHSCHILD LLP**
3 1980 Festival Plaza Drive, Suite 700
4 Las Vegas, Nevada 89135
5 (702) 262-6899 telephone
6 (702) 597-5503 fax
7 mconnot@foxrothschild.com

8 R. KEVIN SPENCER (*Admitted PHV*)
9 Texas Bar Card No. 00786254
10 ZACHARY E. JOHNSON (*Admitted PHV*)
11 Texas Bar Card No. 24063978

12 **SPENCER & JOHNSON, PLLC**
13 500 N. Akard Street, Suite 2150
14 Dallas, Texas 75201
15 kevin@dallasprobate.com
16 zach@dallasprobate.com
17 *Attorneys for Respondent/Counter-Petitioner*
18 *Wendy A. Jaksick*

**SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA**

19 In the Matter of the Administration of the
20 SSJ'S ISSUE TRUST,
21 _____
22 In the Matter of the Administration of the
23 SAMUEL S. JAKSICK, JR. FAMILY TRUST,
24 _____
25 WENDY JAKSICK,
26 Respondent and Counter-Petitioner,
27 v.
28 TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST;
AND STANLEY S. JAKSICK, INDIVIDUALLY
AND AS CO-TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST; KEVIN RILEY,
INDIVIDUALLY AND AS FORMER TRUSTEE
OF THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST AND TRUSTEE OF THE WENDY A.
JAKSICK 2012 BHC FAMILY TRUST,
Petitioners and Counter-Respondents.

CASE NO.: PR17-00445
DEPT. NO. 15

CASE NO.: PR17-00446
DEPT. NO. 15

**WENDY A. JAKSICK'S OPPOSITION
TO PETITION FOR INSTRUCTIONS
REGARDING SETTLEMENT
AGREEMENT**

Wendy A. Jaksick ("Wendy") files this *Wendy A. Jaksick's Opposition to Petition for Instructions Regarding Settlement Agreement* (the "Opposition") in response to the *Petition for*

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, Nevada 89135

1 *Instructions* filed by Todd Jaksick, as Co-Trustee of the Samuel s. Jaksick, Jr. Family Trust (the
2 “Family Trust”) and as Trustee of the SSJ’s Issue Trust (“Issue Trust”), and Stanley Jaksick, as
3 Co-Trustee of the Family Trust, and respectfully shows the Court as follows:

4 **I. STATEMENT OF RELEVANT FACTS**

5 Todd and Kimmel Initiated This Litigation. On August 2, 2017, Todd Jaksick (“Todd”)
6 and Michael Kimmel (“Kimmel”), in their capacities as Co-Trustees of the Family Trust,
7 (collectively, “Petitioners”) filed *Petitions for Confirmation of Trustees and Admission of Trust to*
8 *the Jurisdiction of the Court, and for Approval of Accountings and Other Trust Administration*
9 *Matters* (the “Original Petition”) instituting the current litigation involving the Family Trust and
10 Wendy (the “Lawsuit”). The *Original Petition* sought Court approval of purported trust
11 accountings for the period April 2013 through December 31, 2016 (the “Purported Trust
12 Accounting”), as well as ratification and Court approval of numerous actions taken by Co-
13 Trustees relieving Trustees from liability from such actions.¹ The *Petition* also sought approval
14 of numerous agreements intended to modify the Family Trust and a release of all liability for
15 actions taken pursuant to such agreements.²

16 Stan’s Claims Against Todd. Stanley Jaksick (“Stan”), in his capacity as Co-Trustee of
17 the Family Trust, refused to join the Purported Trust Accountings and refused to join and pursue
18 the *Original Petition*. Instead, on October 10, 2017, Stanley filed an opposition to the *Original*
19 *Petition* (“*Stan’s Opposition*”) including objections to the approval of the Purported Trust
20 Accountings and other claims concerning the administration of Trusts. Stan, the third and only
21 remaining Co-Trustee of the Family Trust, did not just refuse to endorse the defective accountings
22 filed by his Co-Trustees for Court approval by remaining silent, but affirmatively contested them.
23 Stan was a Co-Trustee with insider knowledge and knew the Purported Accountings were
24 deficient, objected to Todd’s use of his purported *Indemnification Agreement* to pay his personal
25 expenses from the Family Trust, and knew other actions of the Co-Trustees were improper.

26 Wendy Forced to Act. As a result of the Lawsuit, Wendy had no choice but to respond
27 and assert all her claims concerning the Trusts, the administration of the Trusts, the purported

28

¹ *Original Petition*, p. 6.

² *Original Petition*, p. 12.

1 *Indemnification Agreements* and all other related matters or risk forfeiting her rights and losing
2 her claims. Wendy also sued all the Trustees in their individual capacities to ensure any
3 judgment payable or enforceable against the Trustees in their Individual capacities would be
4 valid and enforceable. Stan was in Wendy's ear the entire time telling her how Todd and his
5 family were benefiting from the Trusts at Wendy and her family's expense and encouraging
6 Wendy to pursue her claims. Stan had to walk a "tight-rope" as a Co-Trustee who had and
7 was breaching his fiduciary duties in the administration of the Family Trust while suing his
8 Co-Trustees, so he utilized Wendy to fight his proxy war with Todd. Stan needed leverage to
9 force his buy in to the \$18 million plus Lake Tahoe property and to force Todd to continue to
10 look the other way on Stan's refusal to disclose the financial dealings of Montreux (the Family
11 Trust entity Stan controls).

12 Todd's Claims Against Stan. On October 12, 2018, Todd, filed *Todd. B Jaksick's, as*
13 *a Beneficiary of the Samuel s. Jaksick, Jr. Family Trust, Petition for Reconveyance of Trust*
14 *Assets* (the "Todd's Petition for Reconveyance"). In *Todd's Petition for Reconveyance*, Todd
15 accused Stan of receiving funds that were property of the Family Trust, putting them in an
16 entity wholly controlled by Stan to be used for Stan's personal benefit and refusing to convey
17 the funds to the Family Trust.

18 18. Stan also improperly kept \$434,000 in his subtrust from the sale of Bronco Billy's.
19 Instead of transferring these funds into the Family Trust, as agreed, Stan transferred these funds to
20 one of the entities that he wholly controls, Lakeridge Golf Course Ltd.

21 20. After Stan transferred \$434,000 to Lakeridge, an entity he wholly controls, he
22 transferred \$75,000 to Toiyabe Golf Club the next day. Toiyabe Golf Club is not a Family Trust
23 asset, and neither the Family Trust, nor Wendy or Todd have any interest in it.

24 21. When Stan's Co-Trustees learned of the transfer and questioned Stan about its
25 propriety, Stan informed the Co-Trustees that the transfer was made because Lakeridge needed
26 \$300,000 to Montreux Golf Club for another transaction. Montreux Golf Club is a Family Trust
27 asset.
28

1 24. As Trustee, Stan agreed that the funds he received from the sale of the Bronco
2 Billy's stock were the property of the Family Trust and were necessary for the Family Trust to pay
3 its debts and fund the grandchildren's subtrusts.

4 25. Stan's retention of these funds has prevented the Family Trust from being able to
5 fund the grandchildren's trusts.

6 26. As Trustee, Stan agreed to transfer these funds into the Family Trust.

7 27. Stan has refused to transfer these funds. Instead, as beneficiary, Stan is now
8 bringing a claim against Todd in which he claims that Todd, as Trustee, wrongfully withheld
9 funding from the grandchildren's subtrusts. The accusation is false.

10 **VI. CONCLUSION.**

11 For the foregoing reasons, Todd respectfully requests that this Court enter an order
12 reconveying the (1) \$400,000 and (2) \$434,000 to the Family Trust. 3

13 The Settlement on Eve of Trial. The jury trial of all the pending legal claims between the
14 Parties was originally scheduled to begin on February 4, 2019. On January 31, 2019, **Stan,**
15 **Individually,** as beneficiary and **Co-Trustee of the Family Trust** ("Stan") and as **Trustee of**
16 **the 2013 Stanley Jaksick Revocable Family Trust** ("Stan's Trust") and **Todd, Individually,**
17 as beneficiary and **Co-Trustee of the Family Trust,** as **beneficiary and Trustee of the Issue**
18 **Trust, manager of Incline TSS, LLC and Trustee of the Todd B. Jaksick Family Trust, TBJ**
19 **Issue Trust, TBJ SC Trust, and TBJ Investment Trust** ("Todd's Trusts"), entered into the
20 *Settlement Agreement and Release* (the "Settlement Agreement").

21 Just days before trial, Todd and Stan, apparently, resolved all issues between them and
22 their family trusts and appeared at trial as a united front against Wendy. To support the image
23 of a united front and the appearance that the Trustees were and had always been united against
24 Wendy, the Trustees made every effort to suppress the disclosure of the *Settlement Agreement*
25 to the Court and the Jury. **In fact, despite Kent Robison's blatant misrepresentation to the**
26 **Court during the October 14, 2020 hearing,⁴ the Settlement Agreement was not admitted**

27 ³ See *Todd's Petition for Reconveyance*, pp. 3-5 and 8.

28 ⁴ Exhibit 1, 10/14/2020 Transcript, p. 33, lines 10-14 (Kent Robison: "And counsel and I agreed that if it's going to be referred to, maybe the jury should see the whole thing, and we stipulated it into evidence. And the jury had the Settlement Agreement when it deliberated.")

1 They want this Court to approve the *Settlement Agreement*, so they have protection from the
2 beneficiaries for breaching their fiduciary duties by negotiating, entering into and carrying out
3 its terms.⁹ Amazingly, in seeking this Court’s approval of the *Settlement Agreement*, the
4 Trustees never make any effort to establish the *Settlement Agreement* and its terms are in the best
5 in interest of the Trusts and all the beneficiaries. Instead the Trustees attempt to shift the burden
6 to the beneficiaries to establish that the *Settlement Agreement* is: (i) not fair, (ii) not in the best
7 interest of the Trusts and beneficiaries and (iii) should not be approved. The *Settlement*
8 *Agreement* must not be approved for numerous reasons as follows:

9 **A. Settlement Agreement is Breach of Trustees’ Fiduciary Duties and Not in Best**
10 **Interest of the Trusts and All the Beneficiaries.**

11 As an initial matter, Trustees breached and continue to breach their fiduciary duties to
12 Wendy and the other beneficiaries of the Trusts by failing to fully disclose the *Settlement*
13 *Agreement* and its implication and effect. The *Settlement Agreement* includes benefits to Todd,
14 Individually, Stan, Individually, and their family trusts, making it a self-dealing transaction on
15 its face. Because the *Settlement Agreement* is a self-dealing transaction, the burden is on the
16 Trustees to disclose and provide confirmation that this is a fair transaction to the Family Trust,
17 the Issue Trust and the beneficiaries of the Trusts.¹⁰

18 During the October 14, 2020 hearing, Don Lattin, counsel for the Trustees, confirmed
19 the Trustees had an obligation to apprise the beneficiaries of the *Settlement Agreement*, the
20 impact and give the beneficiaries an opportunity to voice their concerns about the *Settlement*
21 *Agreement*, as follows:

22 “from my standpoint representing the trustees and the trusts, all of the
23 beneficiaries ... needed to be appraised of the impact of this settlement
24 and given the opportunity to voice their concerns, support, or
25 comment on the Settlement Agreement once they were given notice
26 and the court had a chance to address any concerns of the

27 ⁹ Exhibit 1, 10/14/2020 Transcript, p. 23, lines 9-11. (“From the Trustees standpoint, they need the protection of the
28 court approving the Settlement Agreement...”)

¹⁰ See, e.g., *Blue Chip Emerald LLC*, 299 A.D.2d 278, 279 (N.Y. 2005) (“[W]hen a fiduciary, in furtherance
of its individual interests, deals with the beneficiary of the duty in a matter relating to the fiduciary
relationship, the fiduciary is strictly obligated to make 'full disclosure' of all material facts.”). See also
Zastrow v. Journal Communications, Inc., 718 N.W.2d 51, 61 (Wis. 2006) (“[I]f a trustee does not make a
full disclosure of material facts to a beneficiary, that conduct is a breach of the trustee's duty of loyalty. . . The
law concludes this breach is intentional.”); *Flippo v. CSC Associates III, L.L.C.*, 547 S.E.2d 216, 222 (Va. 2001)
(Even if a fiduciary's actions are legal, he is in breach when his legal actions are for his own benefit and not for
the beneficiary)

1 settlement.”¹¹

2 Now, almost two years later, Trustees never did this or even made an effort to do this is because
3 the *Settlement Agreement* is not in the best interest of the Trusts and the beneficiaries, but instead
4 is a self-serving effort for the Todd and Stan to protect themselves and further their personal
5 interests.

6 At a minimum, the Trustees have the burden to establish that each and every term of the
7 *Settlement Agreement* is fair and in the best interest of the Trusts and the beneficiaries. The
8 Trustees must also carry the burden of establishing it was in the best interest of the Trusts and
9 the beneficiaries that the Trustees turn their heads away and ignore the prior and ongoing
10 breaches of fiduciary duties related to the administration of the Trusts in exchange for the
11 substantial personal consideration the Trustees and their family trusts received, including the full
12 releases for their bad acts. This is the ultimate fox guarding the hen-house scenario. This should
13 be an impossible burden to carry considering both Todd and Stan expected the other would not
14 live up to their obligations under the *Settlement Agreement*,¹² and it has and will likely be the
15 subject of ongoing litigation in the future, regardless of whether it is approved by the Court.¹³
16 There is no telling (and certainly the Trustees have never disclosed) how much money the Trusts
17 have spent to date negotiating the *Settlement Agreement*, negotiating and attempting to mediate
18 the Trustees’ disputes over the enforceability of the *Settlement Agreement*, and now litigating
19 the Trustees’ disputes concerning the *Settlement Agreement*. Regardless, Trustees used it to gain
20 an advantage in the jury trial. The following aspects of the *Settlement Agreement* are breaches
21 of the Trustees’ fiduciary duties, confirm the *Settlement Agreement* is not in the best interest of
22 the Trusts and beneficiaries and are each grounds for the Court denying approval of the
23 *Settlement Agreement*.

24 _____
25 ¹¹ Exhibit 1, 10/14/2020 Transcript, p. 20, line 22 – p. 21, line 6).

26 ¹² Exhibit 1, 10/14/2020 Transcript, p. 20, lines 4-7 (Adam Hossmer-Henner: “if there’s a rationale to try to evade
27 some of those settlement provisions on the part of Todd. I think we will see an attempt by Todd to evade part of
28 those settlement provisions.”); Exhibit 1, 10/14/2020 Transcript, p. 37, line 24 – p. 38, line 5 (Kent Robison: “And
I agree that the foreseeability of Stan not paying is the elephant in the room. Did we think he wouldn’t pay? Yes.
Did we think he might withhold the money a year after the settlement was reached? Yes. Completely foreseeable. I
know that blows my impossibility argument, but it’s the facts.”).

¹³ Exhibit 1, 10/14/2020 Transcript, p. 38, line 24 – p. 39, line 2 (Kent Robison: “I am not asking you to validate
the agreement. I’m telling you that if it’s validated, there are things to be done.”)

1 Todd Bought Off Stan - Stan's Incline TSS Buy In. Section II(D) of the *Settlement*
2 *Agreement* allows Stan to buy a 27.595% interest in Incline TSS, LLC, the entity that owns the
3 Lake Tahoe Property for \$1,630,000.¹⁴ Stan's buy in would have diluted the Issue Trust's
4 interest in Incline TSS from 54% to 44.81%.¹⁵ To obtain the 27.595% interest, Stan is only
5 required make interest payments at rate of 3% until 2026.¹⁶ Additionally, the terms of the
6 *Settlement Agreement* provide that Stan's interest in Incline TSS shall immediately vest, and that
7 upon a sale, the proceeds would immediately be distributed to Stan.¹⁷

8 In 2015, Stan attempted to buy an interest in in Incline TSS, LLC. At that time, Stan was
9 to pay \$1,500,000 for a 17.02% interest in Incline TSS. Stan's buy in would have diluted the
10 Issue Trust's interest from 54% to 44.81%. On October 28, 2014, Kevin Riley sent an email to
11 Todd and Stan with numbers on Stan's purchase of on interest in Incline TSS, as follows:

12 Todd and Stan,

13 I have worked up some numbers in two different worksheets.

14 The first worksheet is a hypothetical buyin at \$1.5m. There are no discounts involved and Stan would get a 14.2%
interest in the tahoe house.

15 The second worksheet is, a reasonable option provided the property is properly appraised at \$11.5m. This involves the
16 same buyin at \$1.5m and a reasonable 24% discount on the minority interest. Stan's interest would be identical to Todd's
% and the TBJ SC trust's % at 18.7%.

17 Exhibit 4 (Trial Exhibit 441). Kevin Riley confirms in his email that his numbers were based on
18 the Tahoe Property appraising for \$11.5 million.

19 At trial, it was agreed that the approximate value of the Lake Tahoe Property was \$18
20 million¹⁸ with approximately \$2.5 million in outstanding debt.¹⁹ Therefore, the Lake Tahoe
21 Property had increased \$6.5 million from the \$11.5 million value Kevin Riley originally used to
22 calculate Stan's buy in. Despite this considerable increase, the *Settlement Agreement* requires
23 essentially the same buy in price of \$1.6 million for a significantly increased interest in Incline
24

25 _____
26 ¹⁴ *Settlement Agreement*, p. 3, ¶ II(D).

27 ¹⁵ *Id.*

28 ¹⁶ *Id.*

¹⁷ *Id.* at ¶ II(D)(i).

¹⁸ During the October 14, 2020 hearing, Kent Robison, Todd's individual counsel, argued that the Lake Tahoe
Property is worth \$20 million. Exhibit 1, 10/14/2020 Transcript, p. 39, lines 19-21.

¹⁹ Exhibit 3, Trial Transcript, 02/20/2019, 32:9-25.

1 TSS (**\$4.3 million** (($\$18,000,000 - \$2,500,000$) x **.27595**), versus **\$1.53 million** (($\$11,500,000 -$
2 $\$2,500,000$) x **.1702**) under the prior agreement). This is a substantial personal benefit Stan and
3 his family trusts received as consideration for entering the *Settlement Agreement*, sitting by
4 Todd's side during trial and looking the other way concerning Todd's prior and continuing
5 breaches of fiduciary duty. The Trustees have not and cannot establish this is in the best interest
6 of Trusts.

7 How is it possible that Stan can pay essentially the same amount of consideration to buy
8 into Incline TSS for an increased interest when the value of Incline TSS has increased by \$6.5
9 million? Why is the Issue Trust's interest in Incline TSS reduced to the same minority interest
10 of 44% based on a payment of the same amount of consideration? Based on this transaction
11 Todd is trading some of the Issue Trust's value in Incline TSS as consideration for Stan entering
12 the *Settlement Agreement*. Additionally, as a result of the buy in, the Issue Trust will no longer
13 be the majority owner of Incline TSS with the controlling share of the votes. While the
14 *Settlement Agreement* reserves the Issue Trust's remaining 44.81% shares the exclusive right to
15 determine when the Tahoe Property sells (meaning Todd retains total power to control the sale),
16 all other decisions relating to Incline TSS and the Tahoe Property may only be made with the
17 unanimous approval of Stan and Todd.²⁰ None of this is in the best interest of the Issue Trust
18 and its beneficiaries.

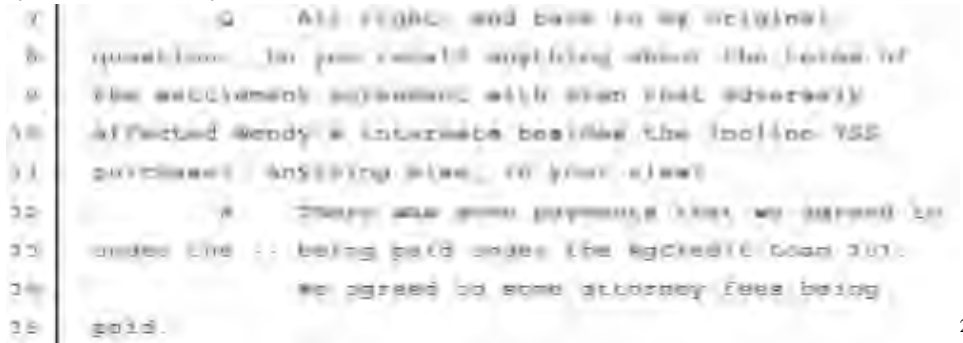
19 Regardless, Stan is getting a significant value out of this buy in on very favorable terms.
20 Stan's interest only payment until January 1, 2026 at three percent (3%) interest means he will
21 be paying approximately \$41,000 a year for his interest worth approximately \$4.3 million
22 (($\$18,000,000 - \$2,500,000$) x .27595). Because the *Settlement Agreement* provides that Stan's
23 interest vests immediately and the proceeds of the sale of the Tahoe Property will be distributed
24 immediately to the members, Stan does not even have to make any payments to receive the
25 benefits of the transaction. If the Lake Tahoe Property were sold in the near future, Stan would
26 receive \$2,882,225 in profit ((($\$18,000,000 - \$2,500,000$) x .27595) - \$1,395,000) for nothing.

27 Therefore, Stan decided to settle and obtain substantial personal benefit instead of
28

²⁰ *Settlement Agreement*, p. 3, ¶II(D)(ii).

1 maintaining and pursuing his claims against Todd as he is obligated to do as a Co-Trustee to
2 protect the interests of the beneficiaries. Similarly, Todd, motivated by self-preservation and
3 other personal benefit, agreed to settle the Family Trust’s claims against Stan, even though Todd
4 was aware that these claims were ongoing and would continue to be issues for the Family Trust
5 in the future.²¹ At that moment, Todd needed Stan on his side and Stan was willing to be bought
6 and look the other way so he could finally obtain his interest in the Lake Tahoe property. This
7 is a *per se* breach of Todd’s and Stan’s fiduciary duties and cannot and must not be approved by
8 this Court.

9 Todd acknowledged in his February 1, 2019 deposition, that the *Settlement Agreement*,
10 including the Tahoe Property purchase, substantial AgCredit loan payments and attorney’s fees,
11 adversely affected Wendy’s interests, as follows:



22

18 Amazingly, the Trustees refused to give Wendy and her counsel the *Settlement Agreement* until
19 after Todd’s deposition, so they did not have a copy and were not able to review the terms prior
20 to taking Todd’s deposition or question Todd concerning the actual terms during the deposition.
21

22 Payment of Todd’s and Stan’s Individual Attorney’s Fees. The *Settlement Agreement*

23 ²¹ Exhibit 1, 10/14/2020 Transcript, p. 40, lines 16-23 (Kent Robison: “Your Honor, the benefit conferred by the
24 Settlement Agreement was that MR. Hosmer-Henner sat on my right as opposed to my left, which was valuable,
25 there no question about that. And Stan’s participation in the trial was Switzerland. I’m a supporter of Wendy and I
26 love my family. I’m very sorry all this dispute is happening. And strategical decisions were made not to bring up
27 Montreux in that trial. Yes, they were.”); Exhibit 1, 10/14/2020 Transcript, p. 73, lines 16-24 (Kent Robison: “And
28 there’s no question that the trustees were very concerned about not getting financial information about Montreux
Development (sic) 2018, 2019, and certainly through the trial and ever since. So if I said something to suggest that
we didn’t know were weren’t getting money or financials from Montreux, I apologize. That’s conceded. We
absolutely did know. And, yes, there was a strategical decision not to go after Stan in front of the jury for that.”);
Exhibit 1, 10/14/2020 Transcript, p. 74, lines 7-12 (Kent Robison: “And we don’t know to this day, how many lots
have been sold, we don’t know how much money has been generated by the sale of lots, and we don’t know where
the money went and what expenses were paid with that money. We just don’t know, as we sit here right now.”).

²² Exhibit 5, Todd Jaksick Depo, 02/01/2019, p. 1218, lines 7-15.

1 provides that the Family Trust will cover the legal fees incurred by the Trustees in the lawsuit.²³
2 The *Settlement Agreement* also provides for the payment of Todd’s and Stan’s attorney’s fees
3 “paid or incurred by Todd or Stan in their individual or beneficiary capacities in Cases Nos.
4 PR17-00445 and PR17-00446 or with respect to any attorney’s fees associated with their
5 *Indemnification Agreements...*”.²⁴ This specifically includes the Family Trust reimbursing Todd,
6 Individually, in the amount of \$400,000 and Stan, Individually, in the amount of \$250,000, with
7 the ability to obtain another \$150,000 if there is an appeal.²⁵ As a result, the Trustees have agreed
8 that the Family Trust will pay their all their attorney’s fees, including those owed in their
9 individual capacities, as partial consideration for the Trustees resolving claims against each other
10 in their fiduciary capacities. This benefits Todd and Stan personally, not the Trusts or their
11 beneficiaries. The other beneficiaries of the Trusts are paying the individual attorney’s fees that
12 Todd and Stan incurred litigating, negotiating and maneuvering against each other to maximize
13 each of the own personal benefits, not to protect and obtain best possible results for the Trust
14 and beneficiaries. Todd admitted in his deposition this adversely affects Wendy’s interest.²⁶
15 This is blatant self-dealing, a breach of Todd’s and Stan’s fiduciary duties and cannot and must
16 not be approved by this Court.

17 *Indemnification Agreement*. The *Settlement Agreement* provides that Todd’s purported
18 *Indemnification Agreement* will not be terminated but will be limited to the payment of Ag Credit
19 loan #101, including all reimbursement, all note forgiveness, and all loan payments until paid in
20 full.²⁷ Todd’s purported *Indemnification Agreement* is a product of Todd’s fraud, and Stan’s
21 pleadings and position prior to being bought off by the *Settlement Agreement* confirmed it. Even
22 if the document is valid, Todd’s self-serving interpretation and attempted application of the
23 *Indemnification Agreement* to pay his personal debts from the funds of the Family Trust is
24 ridiculous and not consistent with its own terms. If the *Indemnification Agreement* is valid, it is
25 clear from its terms that it was created to prevent Todd from being wiped out if Samuel Jaksick’s

26 _____
27 ²³ *Settlement Agreement*, p. 2, ¶ II(A).

28 ²⁴ *Settlement Agreement*, p. 4, ¶ II(G).

²⁵ Id.

²⁶ Exhibit 5, Todd Jaksick Depo, 02/01/2019, p. 1218, lines 7-15.

²⁷ *Settlement Agreement*, p. 4, ¶ II(F).

1 creditors sought to hold Todd or his entities liable for Samuel Jaksick’s debt. Instead, Todd has
2 used and continues to use the *Indemnification Agreement* to pay Todd’s debt on property Todd
3 owns as it becomes due.

4 The Family Trust’s prior payment of Todd’s personal debts were breaches of trust, and
5 this provision in the *Settlement Agreement* requiring the continued payment of Todd’s debts on
6 property Todd, his entities or his family trusts owns is continued self-dealing which benefits
7 Todd at the expense of the Family Trust and its beneficiaries. Instead of advocating for and
8 seeking a reasonable application of the purported *Indemnification Agreement* that protects and
9 is in the best interest of the Trusts and the beneficiaries of the Trusts, Stan agreed to look the
10 other way after he was personally bought off in the *Settlement Agreement*.

11 Todd argues the jury decided the purported *Indemnification Agreement* was valid.
12 Although that is an issue to be heard on appeal, the jury and this Court never heard and ruled on
13 the construction of the purported *Indemnification Agreement* or the proposed application of the
14 purported *Indemnification Agreement*. Therefore, while the purported *Indemnification*
15 *Agreement* may ultimately be confirmed to be valid, the Trustees’ application of the
16 *Indemnification Agreement* to the payment of current and future obligations of Todd has not been
17 resolved, is disputed and is subject to ongoing breach of fiduciary duty claims. This is extremely
18 significant because the Trustees’ application and payment of Todd’s debts under the purported
19 *Indemnification Agreement* has the potential to completely consume the remaining assets of the
20 Family Trust, leaving nothing for Wendy and the other beneficiaries.²⁸ Yet, Trustees ask for
21 approval of it through the *Settlement Agreement*.

22 The Trustees have not made any attempt to establish that the *Settlement Agreement’s*
23 treatment of the purported *Indemnification Agreement* is in the best interest of the Trusts or the
24 beneficiaries. Sure, agreeing the Family Trust, which was set up to take care of Sam Jaksick’s
25 three children, will not be liable to Todd’s mortgage on his \$3 million personal residence is
26 beneficial, but what about all of Todd’s other personal debts?

27 _____
28 ²⁸ Exhibit 1, 10/14/2020 Transcript, p. 54, lines 18-24 (Adam Hossmer-Henner: “...Todd’s indemnification claims
against the trust still number in the millions, that the assets of the Family Trust would eventually be reduced to being
able to pay Todd’s debts and claims against the Family Trust with zero dollars provided to Wendy and zero dollars
provided to Stan and zero dollars provided to Todd, zero dollars provided to grandchildren.”).

1 Payment of Jackrabbit Capital Calls. The *Settlement Agreement* provides that the Family
 2 Trust will pay or reimburse Todd, Stan, and Wendy from the Family Trust for prior and future
 3 capital calls for Jackrabbit Properties, LLC through the 1/1/2021 RaboBank payment.²⁹ This is
 4 a self-dealing and a breach of trust because the payments of Todd’s and Stan’s capital calls for
 5 Jackrabbit Properties far exceed the payments of the capital calls for Wendy’s interest.

6 The current ownership of Jackrabbit is apparently as follows:

7 **Chart B**

8 \$24,000.00	20.0000% Greenshoot Holdings LLC
9 \$12,960.00	10.8000% SC Ranch
10 \$6,240.00	5.2000% George J. Brown 1986 Rev. Trust
11 \$45,708.00	38.0900% TBJ Investment Trust (100% owner of SmkCrk Ranch LLC)
12 \$4,800.00	4.0000% Todd B Jaksick LLC
13 \$2,255.64	1.8797% Samuel S Jaksick Jr Irrv Grandchild Tr No 2
14 \$9,022.44	7.5187% Wendy Jaksick Trust under SJ Trust Family Agreement
15 \$15,013.92	12.5116% Stan Jaksick II LLC
16 <u>\$120,000.00</u>	
17 Capital Call	

18 Exhibit 6 (Trial Exhibit 38), p. 6. In December 2017, Jackrabbit Properties made another capital
 19 call of its members. Todd demanded the portion of the capital call for the TBJ Investment Trust
 20 and Todd Jaksick LLC (totaling \$50,508.00) be paid by the Family Trust pursuant to his
 21 purported *Indemnification Agreement*.³⁰ Stan knew this was not fair and breach of fiduciary
 22 duties and pushed back against Todd’s demand, taking the position that everyone needed to pay
 23 their own interest stating “I have filed an objection with the court regarding this matter so until
 24 it is heard or Todd changes his *Indemnification Agreement* substantially (he knows where I’m
 25 coming from) the trust is not going to make his payments...”.³¹ Apparently, this payment was
 26 eventually made, without Stan complaining.

27 Regardless, if the Family Trust pays or reimburses Todd, Stan and Wendy³² from the

28 ²⁹ *Settlement Agreement*, p. 4, ¶ II(F)(iii).

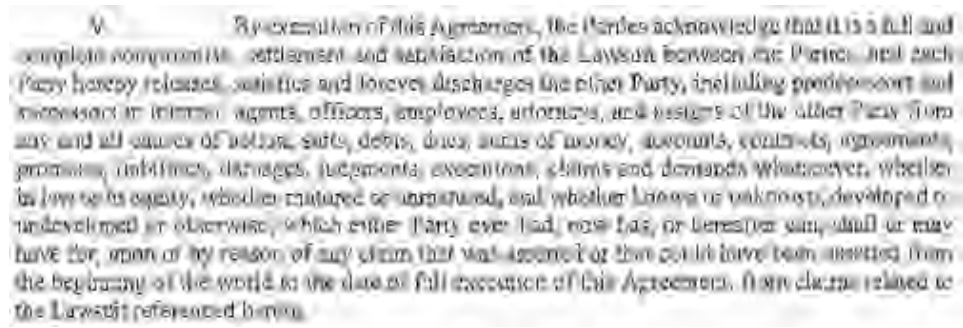
³⁰ Exhibit 6 (Trial Exhibit 38), p. 5.

³¹ Exhibit 6 (Trial Exhibit 38), p. 1.

³² The *Settlement Agreement* provides the “Family Trust will pay or reimburse Todd, Stan and Wendy Jaksick from the Family Trust for prior or future capital calls for Jackrabbit Properties, LLC...”. Todd, Stan and Wendy do not own any interests in Jackrabbit Properties in their individual capacities. Therefore, the language in the *Settlement*

1 Family Trust for prior and future capital calls for Jackrabbit Properties through January 1, 2021,
2 then Todd and his entities/trusts will receive the benefit of 67.75% of the distributions, Stan and
3 his entity will receive the benefit of 20.141% of the distributions and Wendy's Subtrust will
4 receive the benefit of 12.102% of the distributions. This provision in the *Settlement Agreement*
5 that benefits Todd and Stan substantially far more than it benefits Wendy is blatant self-dealing,
6 and egregious breach of fiduciary duty and they are asking the Court to approve it.

7 Mutual Releases. The *Settlement Agreement* includes the following releases for Todd and
8 Stan:

9 

15 *Settlement Agreement*, p. 5, ¶ V. By entering into this *Settlement Agreement*, both Todd and
16 Stan receive substantial personal benefits as consideration. In exchange for this consideration,
17 Todd, in his capacity as Trustee of the Issue Trust and Co-Trustee of the Family Trust, and
18 Stan, in his capacity as Co-Trustee of the Family Trust, have released Todd and Stan, in their
19 individual capacities, and several of their entities and their family trusts from any and all claims
20 the Family Trust and Issue Trust ever had, have or could have through the execution of the
21 *Settlement Agreement*. In other words, Wendy's fiduciaries, on behalf of the Family Trust and
22 Issue Trust, are releasing all claims against themselves, their entities and their family trusts.
23 There is absolutely no reason for the Family Trust and Issue Trust to release all these claims
24 or potential claims against Todd and Stan, especially claims against Todd's and Stan's entities
25 and family trusts that are being released. There has been no disclosure to Wendy or the other
26 beneficiaries concerning the claims or potential claims of the Family Trust and Issue Trust

27 _____
28 *Agreement* contemplates the Family Trust paying the interests that benefit Todd, Stan and Wendy, their entities and/or their trusts. Additionally, the *Settlement Agreement* defines "Todd" to include Todd as Trustee of the TBJ Investment Trust, which owns 38.09% of Jackrabbit Properties. *Settlement Agreement*, p. 1.

1 against Todd, Stan, their entities or their family trusts. As a result, there is no way for Wendy
2 and the other beneficiaries to understand implications and effects of such releases and to
3 confirm same are in the best interest of the Family Trust and Issue Trust. This is just another
4 self-dealing transaction sought to benefit Todd and Stan over the interests of the Family Trust
5 and Issue Trust.

6 **B. Alternatively, Contingent Contract – Neither Contingency Met.**

7 In the alternative, if the Court does not find the *Settlement Agreement* unenforceable *ab*
8 *initio*, it is unenforceable by its terms. It is undisputed the *Settlement Agreement* is contingent
9 up one of two conditions occurring:

10 This Agreement is effective upon execution, but contingent and
11 conditioned upon resolution of Case Nos. PR17-00445 and PR17-
12 00446 through a settlement with Wendy Jack that does not materially
13 alter terms of this Agreement, which settlement is not to be
14 separately made with Wendy Jaksick by either Todd or Stan, or a
15 litigated resolution at trial in the Lawsuit, ***not including appeals***, that
16 does not alter the material terms of this Agreement. The Parties agree
17 not to take any action to thwart the terms of this Agreement during
18 the contingency period. (Emphasis added).³³

19 There are two contingencies in the *Settlement Agreement*, one of which must be met, or the
20 *Settlement Agreement* is unenforceable. The first (summarized) is resolving the Lawsuit via
21 settlement with Wendy; it is undisputed that no settlement with Wendy has occurred. The second
22 (summarized) requires a resolution by trial that “does not alter the material terms of this
23 Agreement,” without regard to any appellate result – meaning, the determination about this
24 condition may be made now, just barely over two months shy of the second anniversary of the
25 *Settlement Agreement*.

26 The *Settlement Agreement* provides, specifically, “[t]he Parties specifically agree that the
27 attorney’s fees provision of this Agreement, Section II(G), is not a material term of this Agreement
28 and variance in this attorney’s fees will not affect the validity of this Agreement. Simply put, paying
each other’s Individual attorneys’ fees and expenses is not a material term. Because the latter was
singled out and excluded as material, all the other terms must be material because the Parties to the
Purported Settlement Agreement could have listed any other term as non-material, when they listed

³³ *Settlement Agreement*, p. 4, Section III.

1 the attorneys' fees one as being non-material.

2 In their *Petition for Instructions*, Trustees admit the result of the jury and equitable trials
3 materially altered the terms of their settlement by the statement, “[t]he Trustees did not contemplate
4 the financial obligations which resulted from the trial of the issues in Case No. PR17-00445 and
5 PR17-00446, including payment of \$300,000.00 for Wendy’s attorney’s fees.” As a conditional
6 contract, if a condition that is required to make it enforceable is not met, the contract does not exist
7 and is not enforceable. Neither contingency required to make the *Settlement Agreement* valid and
8 enforceable, one of which had to have happened, occurred, which means – by its terms – the
9 enforceability of the *Settlement Agreement* was never triggered and, therefore, it is not enforceable.

10 **C. Alternatively, Failure to Seek Approval for Certain Provisions.**

11 In the alternative, if the Court does not find the *Settlement Agreement* unenforceable *ab*
12 *initio*, it is unenforceable by its terms. The *Settlement Agreement* contemplates the following, “To
13 the extent necessary, the Parties will seek (sic) mutually cooperate to obtain court approval of this
14 Agreement.”³⁴ Not only did the Parties fail to seek court approval until instructed to do so by the
15 Court causing them to file the *Petition for Instructions*, the opposite happened, the Parties to the
16 *Settlement Agreement* sued each other. Stan and Todd, apparently, now move together to ask the
17 Court to approve the *Settlement Agreement* asking the Court to determine whether it is
18 enforceable in general.³⁵ But, even the request for approval is conditional because Stan and Todd
19 never thought to determine if it was possible to fund their supposed settlement. They ask the
20 Court, to approve the Agreement *conditioned upon a funding mechanism to fulfill all*
21 *obligations incurred under the Agreement and as a result of the litigation.*³⁶

22 **D. Alternatively, Failure of Performance is Failure of Consideration.**

23 In the alternative, if the Court does not find the *Settlement Agreement* unenforceable *ab*
24 *initio*, it is unenforceable by its terms. Stan and Todd have not provided a single shred of evidence
25 that either has done anything to make the terms of the *Settlement Agreement* happen. Neither
26 produced records showing Stan signed a Note in favor of Incline TSS or that an Option Agreement
27 was completed and option funds paid or that Todd signed a Note in favor of Stan to purchase his

28 ³⁴ *Settlement Agreement*, P. 4, Section III.

³⁵ See *Petition for Instructions*, p. 1.

³⁶ See *Petition for Instructions*, p. 3, Section I and Section II.

1 interest in Buckhorn. The Issue Trust Accounting for 2019 shows ownership of the Issue Trust in
2 Incline TSS at 54% on January 1, 2019, and it remains at 54% on December 31, 2019, so no transfer
3 was made notwithstanding it was to happen immediately.

4 There is not a single shred of proof that any consideration contemplated by the *Settlement*
5 *Agreement* has been exchanged or that performance by either side has occurred, which was and
6 remains the crux of their lawsuits against each other. It is readily apparent the *Settlement Agreement*
7 was a sham solely to gain an advantage before the jury and Your Honor. Turns out, it did nothing,
8 but prejudice Wendy.

9 The *Settlement Agreement* should be set aside as unenforceable because it was used as a
10 total surprise on the eve of trial and was used a sword to gain an advantage without any
11 corresponding ability of Wendy to raise new issues either by pleading or through discovery that
12 would have allowed her to address the switch in position of Stan, as Family Co-Trustee. In short,
13 all the Trustees gained an unfair advantage in the jury trial and equitable trial by the *Settlement*
14 *Agreement*, which was in furtherance of their breach of fiduciary duties and evidences their
15 collusion and conspiracy to commit such breaches.

16 **E. Future of Litigation and No Protection for the Beneficiaries.**

17 It is clear from the pleadings and arguments of Todd's and Stan's counsel since Stan filed
18 the *Motion to Partially Enforce the Settlement Agreement*, there never was anywhere near \$4
19 million in value that Wendy would receive in the near future as Todd, Wendy's fiduciary,
20 represented to the Jury during trial. They cannot even fund their own settlement. That, like the
21 *Settlement Agreement*, was nothing but a ploy to manipulate the Jury, this Honorable Court and
22 Wendy to obtain a favorable outcome for the Trustees. It has been nearly two years and Todd
23 and Stan have done nothing the carry out the terms of the sham *Settlement Agreement*.

24 The value of the Family Trust is its interests in entities that Stan controls and entities that
25 Todd controls.³⁷ Todd and Stan have fought about disclosure and funding of the Family Trust

26
27 ³⁷ Exhibit 1, 10/14/2020 Transcript, p. 50, lines 5-7; Exhibit 1, 10/14/2020 Transcript p. 74, lines 13-23 (Kent
28 Robison: "Now, when that Settlement Agreement was executed, here's the status of the Family Trust. It had two
primary ownerships in closely held corporations, Toiyable and Buckhorn. And the rest of the holdings, your Honor,
in the closely held corporations are not de minimis but they total \$300,000. So the big ticket items of the trust, in
terms of its assets, is Toiyabe, valued by evidently Kevin Riley at that time at \$2.7 million.").

1 from the entities each of them control prior to and during the litigation leading up to trial and
2 continue to fight about these same issues after the *Settlement Agreement* was entered.³⁸ The
3 fights were not resolved by the *Settlement Agreement* and will continue. Todd and Stan revealed
4 their true selves in the litigation concerning the enforcement of the *Settlement Agreement*. This
5 fight, including the pleadings and the arguments of Todd’s and Stan’s counsel, reveal the
6 *Settlement Agreement* was the result of self-interest and self-preservation, not a genuine effort
7 by the Trustees to resolve legitimate issues facing the Trusts and the administration of the Trusts.

8 Todd’s purported *Indemnification Agreement* will likely consume the remainder of the
9 Family Trust assets if Todd and Stan are left in charge.³⁹ Todd and Stan know this and will
10 continue their efforts to avoid funding the Family Trust from the entities they each control. As
11 admitted by Todd’s and Stan’s counsel, an approval of the *Settlement Agreement* will just be the
12 start of litigation concerning (i) the interpretation of the *Settlement Agreement*, as each brother
13 attempts to enforce the beneficial provisions and avoid obligations, and (ii) fights over disclosure
14 of information and the timing and amount of the funding of the Family Trusts imposed on each
15 of Todd’s and Stan’s entities. Todd’s own attorney said the *Settlement Agreement* stands or falls
16 based on funding, and both sides admit funding is impossible. You Honor’s observation that
17 Todd’s and Stan’s “fiduciary responsibilities are entangled with personal interests” and the
18 “tone” of the recent filings concerning the *Settlement Agreement* project “litigation years into
19 the future” is exactly what should be expected.⁴⁰ If the status quo continues, Todd’s and Stan’s
20 efforts to maximize their personal benefits will continue, and the Trusts will continue to be
21 harmed and all the other beneficiaries left unprotected. The Court’s harsh words to the Trustees
22 about its inclination to remove Todd and Stan will result in a short term change of Todd’s and
23

24 ³⁸ Exhibit 1, 10/14/2020 Transcript, p. 62, lines 3-10 (Adam Hossmer-Henner: “...Todd has consistently tried to get
25 Toiyabe to fund the Family Trust, which is why that is the focus of the entire argument at every state. The point is
26 that because Todd believes that Toiyabe should be contributing more to the Family Trust and that that’s one of
27 Stan’s entities, and that Toiyabe should be funding the debts of the Family Trust Todd claims owes him, that’s the
28 central point of disputes between those two brothers. It was attempted to be resolved on multiple occasions and it
wasn’t in the Settlement Agreement...”).

³⁹ Exhibit 1, 10/14/2020 Transcript, p. 54, lines 18-24 (Adam Hossmer-Henner: “...Todd’s indemnification claims
against the trust still number in the millions, that the assets of the Family Trust would eventually be reduced to being
able to pay Todd’s debts and claims against the Family Trust with zero dollars provided to Wendy and zero dollars
provided to Stan and zero dollars provided to Todd, zero dollars provided to grandchildren.”).

⁴⁰ Exhibit 1, 10/14/2020 Transcript, p. 44, lines 20-24.

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, Nevada 89135

1 Stan's behavior for purposes of appearance to the Court, but will not change or resolve any of
2 the underlying issues and or stop the ongoing damage to the Trusts and beneficiaries. The
3 *Settlement Agreement* is unenforceable.

4 **III. CONCLUSION**

5 For the reasons set forth above, Wendy respectfully requests the court refuse to approve
6 the *Settlement Agreement* and deny all other relief sought in the *Petition for Instructions*.

7 **AFFIRMATION STATEMENT**

8 Pursuant to NRS 239B.030

9 The undersigned does hereby affirm that this **WENDY A. JAKSICK'S OPPOSITION TO**
10 **PETITION FOR INSTRUCTIONS REGARDING SETTLEMENT AGREEMENT** filed by Wendy A.
11 Jaksick in the above-captioned matter does not contain the social security number of any person.

12 DATED this 16th day of November, 2020.

13 **FOX ROTHSCHILD LLP**

14 /s/ Mark J. Connot

15 Mark J. Connot (10010)
16 1980 Festival Plaza Drive, #700
17 Las Vegas, NV 89135
18 mconnot@foxrothschild.com

19 **SPENCER & JOHNSON, PLLC**

20 /s/ R. Kevin Spencer

21 R. Kevin Spencer (*Admitted PHV*)
22 Zachary E. Johnson (*Admitted PHV*)
23 500 N. Akard Street, Suite 2150
24 Dallas, Texas 75201
25 kevin@dallasprobate.com
26 zach@dallasprobate.com
27 *Attorneys for Respondent Wendy A. Jaksick*
28

FOX ROTHSCHILD LLP
1980 Festival Plaza Drive, #700
Las Vegas, Nevada 89135

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCPC 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on
3 this 16th day of November, 2020, I served a true and correct copy of **WENDY A. JAKSICK'S**
4 ***OPPOSITION TO PETITION FOR INSTRUCTIONS REGARDING SETTLEMENT AGREEMENT***
by the Court's electronic file and serve system addressed to the following:

5 Kent Robison, Esq.
6 Therese M. Shanks, Esq.
7 Robison, Sharp, Sullivan & Brust
8 71 Washington Street
9 Reno, NV 89503
10 *Attorneys for Todd B. Jaksick, Beneficiary*
11 *SSJ's Issue Trust and Samuel S. Jaksick, Jr.,*
12 *Family Trust*

Donald A. Lattin, Esq.
L. Robert LeGoy, Jr., Esq.
Brian C. McQuaid, Esq.
Carolyn K. Renner, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
Attorneys for Petitioners/Co-Trustees Todd
B. Jaksick and Michael S. Kimmel of the
SSJ's Issue Trust and Samuel S. Jaksick, Jr.,
Family Trust

11 Phil Kreitlein, Esq.
12 Kreitlein Law Group
13 1575 Delucchi Lane, Ste. 101
14 Reno, NV 89502
15 *Attorneys for Stanley S. Jaksick, Co-Trustee*
16 *Samuel S. Jaksick, Jr. Family Trust*

Adam Hosmer-Henner, Esq.
McDonald Carano
100 West Liberty Street, 10th Fl.
P.O. Box 2670
Reno, NV 89505
Attorneys for Stanley S. Jaksick

17 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
18 true and correct.

DATED this 16th day of November, 2020.

19 /s/ Doreen Loffredo
20 An Employee of Fox Rothschild

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DOCUMENT</u>	<u>PAGES</u>
1	Excerpts from October 14, 2020 Hearing Transcript	19
2	Master Jury Trial Exhibit List, dated March 4, 2019	1
3	Excerpts from Jury Trial Transcript	7
4	Email, dated May 1, 2018 (Trial Exhibit 441)	3
5	Excerpts from Todd Jaksick Deposition, dated February 1, 2019	4
6	Email, dated May 14, 2018 (Trial Exhibit 38)	6

FILED
Electronically
PR17-00445
2020-11-16 03:52:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8164178 : csulezic

EXHIBIT 1

EXHIBIT 1

4185
SUNSHINE LITIGATION
151 Country Estates Circle
Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

- o o o -

In the Matter of the	:	
	:	
	:	Case No. PR17-00445
SSJ's ISSUE TRUST,	:	Dept. No. 15
-----	:	
	:	
In the Matter of the	:	Case No. PR17-00446
Administration of	:	Dept. No. 15
	:	
THE SAMUEL S. JAKSICK,	:	
JR., FAMILY TRUST	:	
=====		

TRANSCRIPT OF PROCEEDINGS
VIA AUDIO/VISUAL TRANSMISSION

ORAL ARGUMENTS

WEDNESDAY, OCTOBER 14TH, 2020

Washoe County, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

A P P E A R A N C E S

FOR PETITIONERS/CO-TRUSTEES TODD JAKSICK and SAMUEL S. JAKSICK, JR., FAMILY TRUST:

DONALD A. LATTIN, ESQ.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, Nevada 89519

FOR STAN JAKSICK, INDIVIDUALLY, AND AS BENEFICIARY OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST AND SSJ'S ISSUE TRUST:

ADAM HOSMER-HENNER, ESQ.
McDonald Carano
100 W. Liberty Street, 10th Floor
Reno, Nevada 89501

FOR TODD JAKSICK, INDIVIDUALLY, AND AS BENEFICIARY OF THE SSJ'S ISSUE TRUST AND SAMUEL S. JAKSICK, JR., FAMILY TRUST:

KENT R. ROBISON, ESQ.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503

-o0o-

WASHOE COUNTY, NEVADA

WEDNESDAY, OCTOBER 14TH, 2020, 8:30 A.M.

-o0o-

THE COURT: Good morning, everyone.

Let me call the case. It's PR17-00445, to summarize, counsel. We all know the case. It's the SSJ and its related parties and entities.

I see Mr. Robison. I see Mr. Hosmer-Henner. I believe I see Mr. Todd Jaksick. And do I have anybody else who wishes to make an appearance?

MR. LATTIN: Yes, your Honor. Don Lattin representing the trustees of the Family Trust and Todd Jaksick in his capacity as the SSJ Issue Trust Trustee.

THE COURT: Thank you. And I see a banner of Stan Jaksick's name. I do not see him visually, which is fine.

Ms. Clerk, that appears to be everyone that I have.

Mr. Lattin, I did not see a prehearing statement from you.

MR. LATTIN: Yes, your Honor, that is correct.

1 litigation if the parties have differing interpretations
2 of those settlement provisions -- have intentionally
3 different interpretations of those settlement provisions
4 and, more importantly, if there's a rationale to try to
5 evade some of those settlement provisions on the part of
6 Todd. I think we will see an attempt by Todd to evade
7 part of those settlement provisions.

8 THE COURT: Mr. Lattin or Mr. Robison, whoever
9 wishes to go first.

10 MR. LATTIN: I can, if you would like, your Honor.

11 THE COURT: Thank you.

12 MR. LATTIN: We, too, as the trustees, that
13 includes all the trustees, Mr. Kimbell as well as Todd
14 and Stan, negotiated this settlement in good faith. We
15 negotiated it on the eve of the trial, and it took
16 Mr. Hosmer and I hours to negotiate it. It was always
17 anticipated because the court had taken jurisdiction of
18 both the SSJ Issue Trust and the Family Trust that it
19 would -- the Settlement Agreement would be presented to
20 the court as any other -- as in any other probate matter
21 when there is a settlement to be approved by the court.

22 The reason for that was because, from my
23 standpoint representing the trustees and the trust, all
24 of the beneficiaries both of the Family Trust, and there

1 are others aside from Wendy, and all of the beneficiaries
2 of the Issue Trust, needed to be apprised of the impact
3 of this settlement and given the opportunity to voice
4 their concerns, support, or comment on the Settlement
5 Agreement once they were given notice and the court had a
6 chance to address any concerns of the settlement. So it
7 was always anticipated that it would come before this
8 court for approval.

9 It was because of that, it was always referenced
10 in the settlement agreement that it would come before the
11 court. So on behalf of the trustees we believe this
12 agreement is only enforceable once the court approves it,
13 and I know that you commented in your previous order that
14 that was a ministerial act. While I agree that it is a
15 ministerial act, it's an important one because of the
16 implications to each of the beneficiaries. And a lot of
17 the beneficiaries, while they were minors before this
18 Settlement Agreement was entered into, they are now over
19 the age of 18 and would be entitled to come in and object
20 to this.

21 THE COURT: Mr. Lattin, I want to focus on this a
22 little bit -- because this is not a usual case. It is
23 unusual.

24 MR. LATTIN: I think we all know that, your Honor.

1 and perhaps the court would have said, the jury approved
2 this and so therefore, as the judge in this matter, I'm
3 going to agree with what the jury said.

4 All I'm talking about is a venue for all of the
5 beneficiaries who are not involved in the trial to have
6 their participation, so that's my point on that.

7 THE COURT: Okay. I understand that point. I
8 understand that.

9 MR. LATTIN: From a trustee's standpoint, they
10 need the protection of the court approving the Settlement
11 Agreement as well just for formality reasons.

12 Now, with regard to the actual Settlement
13 Agreement, it was anticipated when that was entered into
14 that there would be funding available from the Family
15 Trust and the Issue Trust assets to pay all the
16 particular obligations that are set forth in the
17 Settlement Agreement.

18 THE COURT: Where does the agreement reflect in
19 writing that anticipation?

20 MR. LATTIN: Well, one example is on page 4 of 8
21 of the Settlement Agreement.

22 THE COURT: What exhibit is that in these
23 electronic --

24 MR. LATTIN: You know, I'm looking at paper

1 to allow the jury to know about it or for it to be in
2 evidence at all. And I believe that Stan and Todd took
3 that position.

4 The settlement was admitted in part during the
5 testimony. I think the court's ruling was it was
6 relevant to the credibility of Todd and/or Stan because
7 of the bias it might create to testify against
8 Wednesday -- Wendy -- excuse me -- and so bit by bit the
9 witnesses were examined about specific portions, and you
10 allowed Mr. Todd Jaksick to read section 3. And counsel
11 and I agreed that if it's going to be referred to, maybe
12 the jury should see the whole thing, and we stipulated it
13 into evidence. And the jury had the Settlement Agreement
14 when it deliberated.

15 The question is, did that benefit Todd as having
16 made peace with his brother and did it benefit Stan as
17 having made peace with his brother, but Stan gave up his
18 claims against Todd in exchange for that Settlement
19 Agreement, which clearly changed the landscape of the
20 jury trial. We know that.

21 The Settlement Agreement is a good one. The
22 Settlement Agreement is fair. The Settlement Agreement
23 helps Luke. The Settlement Agreement benefits Wendy.
24 The Settlement Agreement benefits Stan and it benefits

1 THE COURT: I understand your argument that one
2 implies the other, but I have specifically enumerated
3 conditions that compose a contingency category, and it's
4 just silent about that.

5 MR. ROBISON: It is silent. I'm not going to blue
6 pan the Settlement Agreement before you. But I think if
7 you -- if anyone ever got in downstream to whether or not
8 there was a covenant of good faith and fair dealing to
9 have Stan account for and distribute funds to the Family
10 Trust, I don't know whether that will ever be created as
11 an argument or not.

12 I see most of those individual provisions as
13 executor. If you validate this agreement for the reasons
14 you've stated in your order to set, both parties are
15 required to do things in the future to make it an
16 executive -- a completed contract. So your ruling today
17 sets the stage for what happens in the future.

18 I'm a little bit optimistic that if you validate
19 this agreement, it might work. There might be Toiyabe
20 money to fund the debt. There might be a liquidation of
21 assets to substantiate the debt articulated in the
22 Settlement Agreement. But that is -- those are future
23 events after the Settlement Agreement is validated.

24 And I agree that the foreseeability of Stan not

1 paying is the elephant in the room. Did we think he
2 wouldn't pay? Yes. Did we think he might withhold the
3 money a year after the settlement was reached? Yes.
4 Completely foreseeable. I know that blows my impossibly
5 argument, but it's the facts.

6 THE COURT: So, Mr. Robison, it sounds like you're
7 arguing that I should validate this agreement?

8 MR. ROBISON: Well, your Honor, I think -- you
9 asked both counsel what that order would look like --

10 THE COURT: I was going to ask you the same thing.

11 MR. ROBISON: Upon motion made and good cause
12 appearing, the court sets a hearing for approval of the
13 settlement agreement and notifies all parties. The
14 trustees are entitled to that order approving the
15 settlement, and the arguments to be made about the
16 validity of that agreement has to be aired out before the
17 Supreme Court hears it.

18 We are scheduled for a December 16 mediation
19 settlement with the Supreme Court mediator. We know that
20 Wendy is bringing this to the table. We know that we
21 have to address it. I'm not asking you to defer ruling
22 but I'm enlightening you to what we see coming down in
23 the future.

24 That said, your Honor, I'm not asking you to

1 validate the agreement. I'm telling you that if it's
2 validated, there are things to be done. And we both
3 know, your Honor, one of those things to be done is to
4 see if we can leverage some money out of Toiyabe to fund
5 the provisions of the Settlement Agreement, that's
6 something that we have to address, if it's validated.

7 THE COURT: Would you all pause for just a moment
8 and one of you quickly tell me the page and paragraph of
9 the language about approval? I cited it in my order,
10 I've read this agreement many times, but I just need to
11 be able to find it because the language is less artful in
12 the agreement than the arguments being made because it
13 seems to have a qualifier.

14 MR. ROBISON: To the extent necessary, the parties
15 will seek court approval.

16 THE COURT: Right, *to the extent necessary*.

17 MR. ROBISON: Right. Now I'm going to defer on
18 this one because I wasn't in the drafting exercise nor
19 the negotiations. But if you -- if you dilute the Issue
20 Trust interest in the \$20 million asset called the Lake
21 Tahoe house, I'm not quite sure how Todd, as the trustee,
22 as he testified in trial, can do that without your
23 approval.

24 THE COURT: I want to push you a little bit in the

1 same way I pushed Mr. Lattin.

2 MR. ROBISON: I'm going to defer now.

3 THE COURT: I'm not done with you yet.

4 Sometimes we should be careful about what we
5 request because we might actually receive it.

6 I've indicated my concern about how that agreement
7 changed the jury trial. You've acknowledged as much.
8 Everybody in good faith would acknowledge that the trial
9 changed because of the party positions. And if I choose
10 not to validate this Settlement Agreement, must I then
11 consider a new trial just as a matter of manifest
12 justice?

13 MR. ROBISON: Your Honor, the Supreme Court is
14 going to be inundated with new trial requests, whether
15 this Settlement Agreement is validated or not by Wendy's
16 counsel. Your Honor, the benefit conferred by the
17 Settlement Agreement was that Mr. Hosmer-Henner sat on my
18 right as opposed to my left, which was valuable, there's
19 no question about that. And Stan's participation in the
20 trial was Switzerland. I'm a supporter of Wendy and I
21 love my family. I'm very sorry all this dispute is
22 happening. And strategical decisions were made not to
23 bring up Montreux in that trial. Yes, they were. But
24 Todd did not get the benefit of Stan not going after

1 THE COURT: That's fine. Thank you.

2 Could we all just pause for a moment? I'm going
3 to cycle through again with Mr. Hosmer-Henner.

4 I think at this point, I'm going to add a little
5 more detail about my reaction to reading this newest
6 round of moving papers so that you can comment in your
7 next opportunity to argue.

8 In my most reactive moment, grounded in
9 frustration, I thought I would enter an order directing
10 Wendy's counsel to file points and authorities examining
11 this court's ability under the probate code -- because I
12 have continuing jurisdictional oversight of the trust, to
13 examine this court's ability under the probate court
14 rules of appellate procedure and any other decisional
15 authorities, this court's ability to enter an order
16 directing the trustees to show cause why they should not
17 be removed from their trusteeship. And if and how this
18 court could broaden this order to all entities in which
19 Todd and Stan had management or trustee authority,
20 because it appears to me that the fiduciary
21 responsibilities are entangled with personal interests,
22 and that is a very nuclear option. But given the tone of
23 Todd's individual response, projecting litigation years
24 into the future against Stan regarding fiduciary duties,

1 THE COURT: Forgive me. You've taken me to the
2 complexities and I began my question by focusing on the
3 core. Does the Family Trust have an interest in an
4 entity that Stan manages or otherwise controls?

5 MR. HOSMER-HENNER: Yes, the Family Trust is an
6 entity in multiple entities that Stan manages or
7 controls, as well as that Todd manages and controls.

8 THE COURT: This is an allegation, I understand,
9 but Stan can make management or control decisions that
10 either open the portal of money to the Family Trust or
11 closes the portal of money to the Family Trust; is that
12 right?

13 MR. HOSMER-HENNER: Not of Toiyabe, because those
14 decisions are made down below at the Montreux Development
15 Group level.

16 THE COURT: Which is why I included in my late
17 night reactive outlined order that I would want points
18 and authorities not just to remove the trustees of the
19 subject entities but how I could lawfully broaden my
20 order to include every single entity in which Todd and
21 Stan had management or trustee authority.

22 MR. HOSMER-HENNER: Your Honor, I'll clarify that
23 then with respect to Toiyabe. The Family Trust, to my
24 knowledge, doesn't have the ability to appoint the

1 speculations about where the money are something that
2 were explored during discovery and could have been
3 explored during discovery. But Montreux Development
4 Group is an ongoing entity. It is publically recorded
5 that it is in the process of obtaining a final map. It
6 may have value, but it doesn't have liquid value and it's
7 real estate value because the money has been reinvested
8 in the company, then it doesn't need to distribute those
9 funds to the Family Trust at this point in time. But it
10 still absolutely retains some value and the Family Trust
11 still has a 50-percent share in a valuable company that
12 controls real estate. But to say that a holding company
13 should be partitioned makes no corporate sense. And to
14 say that there's some entitlement to liquidate two levels
15 down these lots to then provide them to the Family Trust,
16 which again at this point, may have nothing left given
17 the other litigation involved in the case, which means
18 that Todd's indemnification claims against the trust
19 still number in the millions, that the assets of the
20 Family Trust would eventually be reduced to being able to
21 pay Todd's debts and claims against the Family Trust with
22 zero dollars provided to Wendy and zero dollars provided
23 to Stan and zero dollars provided to Todd, zero dollars
24 provided to grandchildren. That's that course we're

1 individual entities. We're just here to discuss the
2 Settlement Agreement. But the problem, your Honor, is
3 that Todd has consistently tried to get Toiyabe to fund
4 the Family Trust, which is why that is the focus of their
5 entire argument at every stage. The point is that
6 because Todd believes that Toiyabe should be contributing
7 more to the Family Trust and that that's one of Stan's
8 entities, and that Toiyabe should be funding the debts of
9 the Family Trust Todd claims owes him, that's the central
10 point of dispute between those two brothers. It was
11 attempted to be resolved on multiple occasions and it
12 wasn't in the Settlement Agreement, so to insert it now
13 as a hidden term in the Settlement Agreement is
14 completely outside the course of the parties'
15 negotiations and dealing.

16 THE COURT: Let me not then focus on the hidden
17 term but a disclosed term. Todd and Stan agreed in the
18 Settlement Agreement that they would wrap up the affairs
19 of the trust as soon as practicable but they also
20 identified what could be practicable as an end-of-year
21 date. I think it was December 31st.

22 Counsel, I'm close enough so you know what I'm
23 referring to, I hope.

24 How could this Family Trust ever wrap up its

1 indicated my inclination that the verdict itself and the
2 court's equitable order did not affect those. I'm trying
3 to put that in one category while thinking about the
4 court's approval of the entire agreement and how I -- how
5 I reconcile my continuing inclination that the verdict
6 didn't disrupt those specific conditions, while giving
7 all beneficiaries a chance to be fully heard on the
8 validity of the agreement.

9 Mr. Robison?

10 MR. ROBISON: Your Honor, I don't know what I
11 argued to create the impression that counsel articulates
12 that we were not aware that Montreux was not being funded
13 before the trial. I think in my statement I argued and
14 stated, of course, we were aware and I even stated in my
15 argument that that would be counterproductive to my
16 impossibility argument. I said that. And there's no
17 question that the trustees were very concerned about not
18 getting financial information about Montreux Development
19 2018, 2019, and certainly through the trial and ever
20 since. So if I said something to suggest that we didn't
21 know that we weren't getting money or financials from
22 Montreux, I apologize. That's conceded. We absolutely
23 did know. And, yes, there was a strategical decision not
24 to go after Stan in front of the jury for that.

1 But the fact remains this, in 2018, your Honor,
2 Kevin Riley gives a value for the Family Trust interest
3 in Montreux, \$2.7 million according to the 2018
4 financials. In 2019, we get financials that show that,
5 according to Kevin Riley, the value of the Family Trust
6 interest in Montreux is 2.5 million, so it's going down.
7 It's not going up. And we don't know to this day, how
8 many lots have been sold, we don't know how much money
9 has been generated by the sale of lots, and we don't know
10 where the money went and what expenses were paid with
11 that money. We just don't know, as we sit here right
12 now.

13 Now, when that Settlement Agreement was executed,
14 here's the status of the Family Trust. It had two
15 primary ownerships in closely held corporations, Toiyabe
16 and Buckhorn. And the rest of the holdings, your Honor,
17 in the closely held corporations are not de minimis but
18 they total \$300,000. So the big ticket items of the
19 trust, in terms of its assets, is Toiyabe, valued by
20 evidently Kevin Riley at that time at \$2.7 million. And
21 it's impossible for anybody to think that that Settlement
22 Agreement was not signed with some recognition that money
23 was there.

24 Despite the April letter -- I believe that's

1 that were submitted in advance of this hearing. They're
2 part of the court record but I'm just not going to
3 formally admit them. I am not excluding in any way the
4 exhibits that were attached to the moving papers which,
5 counsel, you know I read. I referenced them in my order.
6 I just don't know what they are.

7 MR. ROBISON: Thank you.

8 THE COURT: All right. Anything else?

9 MR. ROBISON: Nothing.

10 MR. LATTIN: Nothing, your Honor.

11 THE COURT: The court will leave the session.

12 Good day to all of you.

13 (At 10:50 a.m., court adjourned.)

14 * * * * *

1 STATE OF NEVADA)
) ss.
 2 COUNTY OF WASHOE)

3

4 I, ERIN T. FERRETTO, an Official Reporter
 5 of the Second Judicial District Court of the State of
 6 Nevada, in and for the County of Washoe, DO HEREBY
 7 CERTIFY:

8 That I was present in Department No. 15 of
 9 the above-entitled Court on WEDNESDAY, OCTOBER 14TH,
 10 2020, and took verbatim stenotype notes of the
 11 proceedings had upon the matter captioned within, and
 12 thereafter transcribed them into typewriting as herein
 13 appears;

14 That the foregoing transcript is a full,
 15 true and correct transcription of my stenotype notes of
 16 said proceedings.

17 That I am not related to or employed by any
 18 parties or attorneys herein, nor financially interested
 19 in the outcome of these proceedings.

20

21 DATED: This 2nd day of November, 2020.

22

23 /s/ Erin T. Ferretto

24

ERIN T. FERRETTO, CCR #281

FILED
Electronically
PR17-00445
2020-11-16 03:52:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8164178 : csulezic

EXHIBIT 2

EXHIBIT 2

Jury Trial Exhibits

TITLE: CONS: TRUST: SSJ'S ISSUE TRUST

PET: Wendy Jaksick ATTYs: Kevin Spencer, Esq. + Zachary Johnson, Esq. + Mark Connot, Esq.
 RESP: Todd Jaksick ATTYs: Kent Robison, Esq. + Therese Shanks, Esq.
 RESP: Stan Jaksick ATTYs: Adam Hosmer-Henner, Esq. + Philip Kreitlein, Esq.
 TRUSTEES: Michael Kimmel + Kevin Riley ATTY: Donald Lattin, Esq.

Case No: **PR17-00445** Dept. No: **15** Clerk: **A. Dick** Date: **3/1/19**

Exhibit No.	Party	Description	Marked	Offered	Admitted
454	Wendy Jaksick	Email Dated February 14, 2017 From Todd Jaksick to Stan Jaksick, Re: Personal Guarantee	2/4/19	NO OBJECTION	2/20/19
455	Wendy Jaksick	Email Dated July 21, 2017 From Kevin Riley to Wendy Jaksick, Re: bhc Trust	2/4/19		
456	Wendy Jaksick	Email Dated December 05, 2017 From Stan Jaksick to Todd Jaksick, Re: Meeting notes 11/29/17	2/4/19		
457	Wendy Jaksick	Settlement Agreement Between Todd Jaksick and Stan Jaksick	2/19/19		---
458	Wendy Jaksick	Correspondence dated February 24, 2006 from Robert LeGoy and Gustave Rossi to Sam Jaksick and Todd Jaksick, Re: Proposed transfer of Home Camp Land and Livestock Co., Inc	2/14/19		
459	Wendy Jaksick	Email dated May 11, 2006 from Robert LeGoy to Jessica Clayton, Re: Clayton's direction to sign family trust	2/14/19		

FILED
Electronically
PR17-00445
2020-11-16 03:52:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8164178 : csulezic

EXHIBIT 3

EXHIBIT 3

1 Code #4185

2 SUNSHINE REPORTING SERVICES
3 151 Country Estates Circle
4 Reno, Nevada 89511
5 775-323-3411

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9 -o0o-

10 WENDY JAKSICK,

Case No. PR17-00445

11 Petitioner,

Dept. 15

12 vs.

13 Case No. PR17-00446

14 TODD B. JAKSICK, Individually,
15 as Co-Trustee of the Samuel S.
16 Jaksick Jr. Family Trust, and
as Trustee of the SSJ's Issue
Trust; et al.,

Dept. 15

17 Defendants.

18 _____/

19 TRANSCRIPT OF PROCEEDINGS

20 JURY TRIAL - 4

21 February 20, 2019

22 Reno, Nevada

23
24 REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

25 Job No. 529102

1 APPEARANCES:

2 For Wendy Jaksick:

3 SPENCER & JOHNSON, PLLC
4 BY: R. KEVIN SPENCER, ESQ.
5 AND: ZACHARY JOHNSON, ESQ.
6 500 N. Akard Street, Suite 2150
7 Dallas, Texas 75201
8 214-965-9999
9 241-965-9500
10 kevin@dallasprobate.com
11 zach@dallasprobate.com

12 And:

13 FOX ROTHSCHILD LLP
14 BY: MARK J. CONNOT, ESQ.
15 One Summerlin
16 1980 Festival Plaza Dr., Suite 700
17 Las Vegas, Nevada 89135
18 702-262-6899
19 Fax 702-597-5503
20 mconnot@foxrothschild.com

21 For Todd Jaksick:

22 ROBISON, SHARP, SULLIVAN & BRUST
23 BY: KENT R. ROBISON, ESQ.
24 71 Washington Street
25 Reno, Nevada 89503
775-329-3151
Fax 775-329-7941
krobison@rssblaw.com

For Stan J. Jaksick:

McDONALD CARANO WILSON LLP
BY: ADAM HOSMER-HENNER, ESQ.
100 W. Liberty Street, 10th Floor
P. O. Box 2670
Reno, Nevada 89501
775-788-2000
Fax 775-788-2020
ahosmerhenner@mcdonaldcarano.com

1 For Michael Kimmel, Kevin Riley and Todd Jaksick:
2

3 MAUPIN, COX & LeGOY
4 BY: DONALD A. LATTIN, ESQ.
5 4785 Caughlin Parkway
6 P. O. Box 30000
7 Reno, Nevada 89520
8 775-827-2000
9 775-827-2185
10 dlattin@mclrenolaw.com
11

12 Also present:
13

14 KEITH CARTWRIGHT
15 Courtroom Concepts
16 Houston, Texas
17
18
19
20
21
22
23
24
25

1 current value. You may even probe his reference to Zillow and
2 what that means.

3 But in terms of a document admitted into evidence as a
4 statement of value, I'm going to disallow it.

5 MR. SPENCER: Thank you, Your Honor.

6 BY MR. SPENCER:

7 Q So we talked about Zillow, what it is, generally, the
8 online service, and you are familiar with that.

9 Do you accept the Zillow valuation that you've
10 referenced earlier, 18 to 19 million?

11 A Yeah, I think that the only way we would know to be able
12 to prove that is actually try to sell the house and see what it
13 sells for. But I think it could very well be in that range of the
14 18 million.

15 There's a few things with the Tahoe house that are a
16 little bit different than some of the other Tahoe houses right in
17 the area, that are issues that we have on the piece of property,
18 versus some of the neighbors.

19 Q Okay. But as owner of the entity that owns the
20 Lake Tahoe property, you would generally agree the appraisal range
21 would be in the \$18 million range?

22 A I think it is certainly possible. And I think if we
23 were going to try to sell it, we would try more than that. It
24 just depends on what buyer we were able to find that would
25 actually come to acquire the house.

1 THE COURT: All right. Bring the jury in.

2 (The jury entered the courtroom.)

3 THE COURT: As you arrive in your seats, you may please
4 be seated.

5 And Counsel may continue.

6 MR. SPENCER: Thank you, Your Honor.

7 BY MR. SPENCER:

8 Q Todd, before the break, we were looking at the
9 accountings. And we got to December 31st of 2017, and your
10 personal mortgage was still on that accounting.

11 And I believe now, you said that that personal mortgage
12 is no longer a claim that you are making against the family trust.
13 Is that right?

14 A That is correct.

15 Q Okay. And why is that?

16 A It's been a contested item between my brother and I over
17 the years, and we came to an agreement. And I told him that I
18 would remove it off the Exhibit A of the indemnification
19 agreement.

20 Q Uh-huh. And have you ever told Wendy that?

21 A Not yet.

22 Q All right. And the agreement to -- that you've reached
23 with Stan -- and you two are cotrustees of the family trust still,
24 right?

25 A Yes.

1 decision made, I think, at one week after this, October 14th,
2 October 21st, that all those creditor claims that I was talking
3 about -- that I was trying to find the stack of them, we were
4 talking about an hour or so ago -- it was agreed by Brian McQuaid
5 and the trustees that all those creditor claims would be filed, as
6 well as there was creditor claims filed on behalf of other lenders
7 as well.

8 THE COURT: Thank you.

9 Ladies and gentlemen, during this evening recess, you
10 are admonished not to converse among yourselves or with anyone
11 else on any subject connected with this trial.

12 You will not read, watch or listen to any report of or
13 commentary on the trial by any person connected with this case or
14 by any medium of information, including, without limitation, the
15 newspaper, television, Internet or radio.

16 Please be mindful of the Court's continuing
17 admonishment. No social media investigations or research.

18 You are further admonished not to form or express any
19 opinion on any subject connected with this trial until the case is
20 submitted to you for deliberations.

21 Good night, ladies and gentlemen. We'll see you, for
22 entry into the courtroom, at 9:45 tomorrow morning.

23 Stand for our jury.

24 (The proceedings concluded at 4:16 p.m.)

25 -oOo-

1 STATE OF NEVADA)
2 WASHOE COUNTY) ss.
3)
4)

5 I, CONSTANCE S. EISENBERG, an Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in and for
7 the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department 15 of the
9 above-entitled Court on February 20, 2019, and took verbatim
10 stenotype notes of the proceedings had upon the matter captioned
11 within, and thereafter transcribed them into typewriting as herein
12 appears;

13 That I am not a relative nor an employee of any of the
14 parties, nor am I financially or otherwise interested in this
15 action;

16 That the foregoing transcript, consisting of pages 1
17 through 192, is a full, true and correct transcription of my
18 stenotype notes of said proceedings.

19 DATED: At Reno, Nevada, this 11th day of May, 2019.
20
21

22 /s/Constance S. Eisenberg

23 _____
24 CONSTANCE S. EISENBERG
25 CCR #142, RMR, CRR

FILED
Electronically
PR17-00445
2020-11-16 03:52:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8164178 : csulezic

EXHIBIT 4

EXHIBIT 4

Fwd: Tahoe/Incline TSS

1 message

Jessica Clayton <jtclaytone@gmail.com>
To: Jessica Clayton <jtclaytone@gmail.com>

Tue, May 1, 2018 at 12:12 PM

From: Kevin Riley <kevin@rmb-cpa.com>
Date: Tue, Oct 28, 2014 at 2:52 PM
Subject: Tahoe/Incline TSS
To: Todd Jaksick <tjaksick@gmail.com>, "sej3232@aol.com" <sej3232@aol.com>

Todd and Stan,


I have worked up some numbers in two different worksheets.

The first worksheet is a hypothetical buyin at \$1.5m. There are no discounts involved and Stan would get a 14.2% interest in the tahoe house.

The second worksheet is a reasonable option provided the property is properly appraised at \$11.5m. This involves the same buyin at \$1.5m and a reasonable 24% discount on the minority interest. Stan's interest would be identical to Todd's % and the TBJ SC trust's % at 18.7%.

Kevin Riley, CPA
Rossmann MacDonald & Benetti, CPA's
3888 Watt Avenue, Suite E-500
Sacramento, CA 95821
Email: kevin@rmb-cpa.com
Web: www.rmb-cpa.com
Telephone: (916) 488-8380
Fax: (916) 488-9478

This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, or distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.

 Incline TSS recapitalization - stan.pdf
71K

Incline TSS
 New partnership structure #7
 Admission of Stan Jaksick
NO DISCOUNT

	12/15/2014	Recapitalization	Post	Notes	Valuation
Tahoe House Appraisal (from 8/1)	11,500,000.00		11,500,000.00	Kimmel appraisal	11,500,000.00
Note receivable -Stan Jaksick		1,500,000.00	1,500,000.00	Note receivable -Stan Jaksick	1,500,000.00
New primary mortgage	(2,400,000.00)		(2,400,000.00)	Mortgage Debt	(2,400,000.00)
N/P Duck Lake Ranch	(13,300.00)		(13,300.00)	no change	(13,300.00)
N/P White Pine	(22,000.00)		(22,000.00)	no change	(22,000.00)
Net equity 3/14/14	9,064,700.00	1,500,000.00	10,564,700.00	Net equity	10,564,700.00

	Ownership			Ownership after recapitalization	Ownership info	
	TBJ/TBJ SC equity	Recapitalization	totals		Series A Equity	Series B
Todd B Jaksick Family Trust	2,084,881.00		2,084,881.00	Todd B Jaksick Family Trust	2,084,881.00	
Stan Jaksick		1,500,000.00	1,500,000.00	Stan Jaksick	1,500,000.00	
TBJ SC Trust	2,084,881.00		2,084,881.00	TBJ SC Trust		2,084,881.00
SSJ Issue Tr	4,894,938.00		4,894,938.00	SSJ Issue Tr		4,894,938.00
total equity	9,064,700.00	1,500,000.00	10,564,700.00	Totals	3,584,881.00	6,979,819.00

Notes on structure

LLC member interests are subcategorized into Series A and Series B units
 Series A voting units must guarantee the debt
 Series B voting units - no additional contribution requirement
 Stan to acquire Series A units and must guarantee the debt
 Tahoe house is valued at \$11.5m

Incline TSS
 New partnership structure #8
 Admission of Stan Jaksick
 24% DISCOUNT

24.07%

	12/15/2014	Recapitalization	Post	Notes	Valuation
Tahoe House Appraisal (from 8/1)	11,500,000.00		11,500,000.00	Kimmel appraisal	11,500,000.00
Note receivable -Stan Jaksick		1,500,000.00	1,500,000.00	Note receivable -Stan Jaksick	1,500,000.00
					-
					-
New primary mortgage	(2,400,000.00)		(2,400,000.00)	Mortgage Debt	(2,400,000.00)
					-
N/P Duck Lake Ranch	(13,300.00)		(13,300.00)	no change	(13,300.00)
N/P White Pine	(22,000.00)		(22,000.00)	no change	(22,000.00)
					-
Net equity 3/14/14	9,064,700.00	1,500,000.00	10,564,700.00	Net equity	10,564,700.00
				Discounted valuation	8,021,390.00

	Ownership			Ownership after recapitalization	Ownership information		
	TBJ/TBJ SC equity	Recapitalization	totals		Series A Equity	Series B Equity	U
Todd B Jaksick Family Trust	2,084,881.00		2,084,881.00	Todd B Jaksick Family Trust	1,499,934.72		
Stan Jaksick		1,500,000.00	1,500,000.00	Stan Jaksick	1,499,934.72		
TBJ SC Trust	2,084,881.00		2,084,881.00	TBJ SC Trust		1,499,934.72	
SSJ Issue Tr	4,894,938.00		4,894,938.00	SSJ Issue Tr		3,521,585.85	
total equity	9,064,700.00	1,500,000.00	10,564,700.00	Totals	2,999,869.43	5,021,520.57	

Notes on structure

LLC member interests are subcategorized into Series A and Series B units
 Series A voting units must guarantee the debt
 Series B voting units - no additional contribution requirement
 Stan to acquire Series A units and must guarantee the debt
 Tahoe house is valued at \$11.5m
 Entity interest is discounted 25%

	Prior	new units
Todd B Jaksick Family Trust	23.00	
Stan Jaksick		23.00
TBJ SC Trust	23.00	
SSJ Issue Tr	54.00	
	100.00	23.00

FILED
Electronically
PR17-00445
2020-11-16 03:52:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8164178 : csulezic

EXHIBIT 5

EXHIBIT 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE
-oOo-

In the Matter of the Administration :
of the SSJ'S ISSUE TRUST. :
_____ : CASE NO.
: PR17-00445
In the Matter of the Administration : DEPT NO. 15
of the :
SAMUEL S. JAKSICK, JR. FAMILY TRUST : CASE NO.
: PR17-00446
_____ : DEPT. NO. 15
WENDY JAKSICK, :
Respondent and Counter-Petitioner, :
v. :
TODD B. JAKSICK, Individually and as :
Trustee of the Samuel S. Jaksick Jr. :
Family Trust and SSJ's Issue Trust. :
MICHAEL S. KIMMEL, individually and :
as Co-Trustee of the Samuel S. :
Jaksick, Jr., Family Trust, and :
STANLEY S. JAKSICK, Individually and :
as Co-Trustee of the Samuel S. :
Jaksick, Jr. Family Trust, Kevin :
Riley, Individually and as former :
Trustee of the Samuel S. Jaksick, :
Jr. Family Trust and Trustee of the :
Wendy A. Jaksick 2012 BHC Family :
Trust, :
Petitioners and :
Counter-Respondents. :

=====
DEPOSITION OF TODD JAKSICK
VOLUME 7
Friday, February 1, 2019
Reno, Nevada

REPORTED BY: MICHELLE BLAZER CCR #469 (NV)
CSR #3361 (CA)
Pages 1192-1377

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

oOo

APPEARANCES

FOR TODD B. JAKSICK, BENEFICIARY SSJ'S ISSUE TRUST AND
SAMUEL S. JAKSICK, JR., FAMILY TRUST:

ROBISON, SIMONS, SHARP & BRUST
Attorneys at Law

By: Kent Robison, Esq.
71 Washington Street
Reno, Nevada 89503

FOR PETITIONERS/CO-TRUSTEES TODD B. JAKSICK AND
MICHAEL S. KIMMEL OF THE SSJ'S ISSUE TRUST AND SAMUEL
S. JAKSICK, JR., FAMILY TRUST:

MAUPIN, COX & LEGOY
Attorneys at Law

By: Donald A. Lattin, Esq.
By: Carolyn Renner, Esq.
4785 Caughlin Parkway
Reno, Nevada 89509

FOR STANLEY JAKSICK:
MCDONALD CARANO WILSON

Attorneys at Law
By: Adam Hosmer-Henner, Esq.
100 West Liberty Street, Tenth Floor
Reno, Nevada 89505

KREITLEIN LAW GROUP
Attorneys at Law

By: Philip L. Kreitlein, Esq.
470 E. Plumb Lane, Suite 310
Reno, Nevada 89502

FOR WENDY JAKSICK:
FOX ROTHSCHILD LLP

Attorneys at Law
By: Mark J. Connot, Esq.
1980 Festival Plaza Drive Suite 700
Las Vegas, Nevada 89135

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES, (continued)

FOR WENDY A. JAKSICK:
SPENCER & JOHNSON, PLLC
Attorneys at Law
R. Kevin Spencer, Esq.
Zachary Johnson, Esq.
500 N. Akard Street, Suite 2150
Dallas, Texas 75201

ALSO PRESENT:

Wendy Jaksick
Stanley Jaksick

- o O o -

1 Q Okay.

2 A Concept is to be aggressive and sell
3 property and get that debt paid off as quickly as we
4 can.

5 And that's pretty much what I am
6 recalling right now.

7 Q All right, and back to my original
8 question: Do you recall anything about the terms of
9 the settlement agreement with Stan that adversely
10 affected Wendy's interests besides the Incline TSS
11 purchase? Anything else, in your view?

12 A There was some payments that we agreed to
13 under the -- being paid under the AgCredit Loan 101.

14 We agreed to some attorney fees being
15 paid.

16 Q Okay.

17 A But I believe for the most part it was
18 very positive for Wendy, Stan, myself, and the trust.

19 Q Was there any reason you did not include
20 Wendy in that negotiation or settlement discussion?

21 MR. ROBISON: Wait. Wait. Objection.
22 That involves attorney-client communications, and we
23 agreed to stay on the terms of the deal.

24 MR. LATTIN: And it also falls under NRS
25 48.109 which is -- makes the discussions in mediation

FILED
Electronically
PR17-00445
2020-11-16 03:52:10 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8164178 : csulezic

EXHIBIT 6

EXHIBIT 6



Jessica Clayton <jtclaytone@gmail.com>

Fwd: Jackrabbit Capital Call

message

Jessica Clayton <jtclaytone@gmail.com>
To: Jessica Clayton <jtclaytone@gmail.com>

Mon, May 14, 2018 at 1:52 PM

From: Stan Jaksick <ssj3232@aol.com>
Date: December 14, 2017 at 5:38:25 PM PST
To: "LeGoy, Bob" <blegoy@mcllawfirm.com>
Cc: Michael Kimmel <mkimmel@nevadaiaaw.com>, Todd Jaksick <tjaksick@gmail.com>, "McQuaid, Brian" <bmcquaid@mcllawfirm.com>, "Lattin, Don" <dlattin@mcllawfirm.com>, Kevin Riley <kevin@rmb-cpa.com>
Subject: Re: Jackrabbit Capital Call

Hey Guys

Sorry for involving you in these issues and Bob thank you for your efforts in trying to get us to resolve these disputes but Todd's indemnification agreement has a far bigger impact on the Trust then any Lawsuit or attorney fees ever will.

The only option is for Todd to pay for his percentage. I'll pay for mine and so on, This is a matter of principle and never the intentions of my father.

I borrowed money from my dad many times and the key word is BORROWED. I paid him back 90% of the time whether it was for a small loan or my interest in Montreux. I'm not gonna get into what Todd has & hasn't paid for but he has plenty of money and can pay for his own capital calls in an investment that will surely make him and his Trust a lot of money.

I have filed an objection with the court regarding this matter so until it is heard or Todd changes his indemnification agreement substantially (he knows where I'm coming from) the trust is not going to make his payments and last thing to do is hire another Attorney to give us an Opinion weeks before we appear before the Judge.

Sent from my iPhone

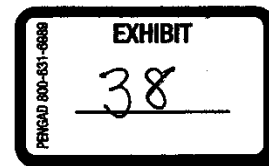
On Dec 14, 2017, at 3:01 PM, LeGoy, Bob <blegoy@mcllawfirm.com> wrote:

Mike,

You make the great point that these disputes are costing the trust and all the parties a substantial amount of fees (and stress). And as we all know, the disputes are only beginning. The costs of these litigations will be staggering, greatly damaging Sam's Trusts and the beneficiaries' personal estates. Our firm thanks all of you for your efforts to resolve these disputes as soon as possible.

Bob LeGoy

L. Robert LeGoy, Jr., Esq.



TJ 1782

AA 0919

Maupin, Cox & LeGoy
4785 Caughlin Parkway
P.O. Box 30000
Reno, Nevada 89520
(775) 827-2000
(775) 827-2185 (facsimile)
Legal Assistant: Sue Mann
blegoy@mclawfirm.com
www.mclawfirm.com

CONFIDENTIALITY -- This message is intended to be confidential and directed only to the person/entity as addressed above. Furthermore, the contents of this message and any attachments hereto may be subject to the attorney-client privilege and/or work product doctrine and should not be disclosed to other parties or distributed/copied in any way. If you have received this message in error, please reply by e-mail to inform us and delete any copies from your hard drive. Thank you.

---Original Message---

From: Michael Kimmel [mailto:mkimmel@nevadalaw.com]
Sent: Thursday, December 14, 2017 2:52 PM
To: Stan Jaksick
Cc: Todd Jaksick; Kevin Riley; McQuaid, Brian; LeGoy, Bob
Subject: Re: Jackrabbit Capital Call

If I correctly understand trust counsel's prior advice, the trust cannot make loans for assets held by related entities.

Todd's demand related to the indemnity agreement is a separate issue. Stan has objected to the enforceability or the scope of the indemnity (or maybe both). I generally understand the nature of Stan's objection, but I have not yet seen the legal argument in support of the objection and, at least so far, am not quite sure on what basis I can just ignore the existence of the agreement.

We can discuss this more in our meeting next week but, in the absence of some consensus between Stan and Todd related to the indemnity agreement, I will likely have no choice but to request that the Trust engage separate legal counsel to issue an opinion letter related to the enforceability and scope of the indemnity. I can only imagine what such an opinion will cost but I'm not sure what else I can do at this point.

TJ 1783

AA 0920

On Dec 14, 2017, at 2:30 PM, Stan Jaksick <ssj3232@aol.com> wrote:

Todd

As we previously discussed I am ok with the Trust loaning you the money for your payment but you will need to have someone draw up the loan documents.

I would prefer that everyone pay there own percentage, like ALL the other partners, with the exception of Wendy/Lukes interest, which list the Trust as the responsible party under your option A and does make sense for the Trust to pay.

I do not agree with your Indemnification agreement and have filed an objection to it, and will not agree to the Trust making your payments on a valuable asset that you have a very good opportunity to profit from down the road.

As you know my request for a small LOAN (10K which included a Promissory note) was not allowed for the Montreux Dev Group (HOA Fees), so my only option is a Capital call in which I'm responsible for my 50% interest.

Stan

Sent from my iPhone

On Dec 13, 2017, at 4:36 PM, Todd Jaksick
<tjaksick@gmail.com> wrote:

Looking forward to talking with you guys. We have a few positive developments related to Jackrabbit. Please see the attached revised capital call request that is needed ASAP but no later than December 22 2017

<Jackrabbit_Capital Call_ChartA_B.pdf>

Thank you

Todd

(775)771-2122

TJ 1784

AA 0921

Mike, Stan and Kevin,

Jackrabbit Properties' executive committee approved a capital call of \$120,000. The minority owners have agreed and are planning to mail in their cumulative total of 36%.

The majority partners' (64%) contribution totals the sum of \$ 76,800.

Please see attached breakdown.

Chart A (shaded area) – is how we have been handling past capital calls over the last several years

Chart B – shows revised payment method post recent discussion with Trust Team

Jackrabbit's capital call is time-sensitive. Jackrabbit needs the capital call to be funded no later than 12/22/17.

I'm requesting the portion of the capital call for the TBJ Investment Trust and Todd Jaksick LLC (totaling \$50,508) be paid by the Samuel S Jaksick Jr Family Trust pursuant to the 2008 Indemnification and Contribution Agreement.

Chart A	
\$24,000.00	20.0000% Greenshoot Holdings LLC
\$12,960.00	10.8000% SC Ranch
\$6,240.00	5.2000% George J. Brown 1986 Rev. Trust
\$34,430.40	28.6920% TBJ Investment Trust (100% owner of SmkCrk Ranch LLC)
\$4,800.00	4.0000% Todd B Jaksick LLC
\$33,832.32	28.1936% Samuel S Jaksick Jr Trust
\$3,737.28	3.1144% Stan Jaksick II LLC
<u>\$120,000.00</u>	
Capital Call	
	\$76,800.00

Chart B	
\$24,000.00	20.0000% Greenshoot Holdings LLC
\$12,960.00	10.8000% SC Ranch
\$6,240.00	5.2000% George J. Brown 1986 Rev. Trust
\$45,708.00	38.0900% TBJ Investment Trust (100% owner of SmkCrk Ranch LLC)
\$4,800.00	4.0000% Todd B Jaksick LLC
\$2,255.64	1.8797% Samuel S Jaksick Jr Irrv Grandchild Tr No 2
\$9,022.44	7.5187% Wendy Jaksick Trust under SJ Trust Family Agreement
\$15,013.92	12.5116% Stan Jaksick II LLC
<u>\$120,000.00</u>	
Capital Call	

Alexi Jaksick Fields
3713 Wrexham St
Frisco Texas 75036

Email alexijaksickfields@yahoo.com

FILED
Electronically
PR17-00445
2020-11-17 02:32:28 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8166061 : csulezic

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

In the matter of the administration of the
SSJ'S ISSUE TRUST

Case No. PR17-00445
DEPT: 15

In the matter of the administration of the
SAMUEL S. JAKSICK, JR. FAMILY TRUIST

Case No. PR17-0045
DEPT: 15

WENDY JAKSICK , Respondent and Counter Petitioner

V.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST, AND AS TRUSTEE OF THE SSJ ISSUE TRUST, MICHAEL J. KIMMEL, INDIVIDUALLY, AS CO-TRUSTEE OF THE SAMUEL S. JAKSICK JR. FAMILY TRUST AND STANLEY JAKSICK, INDIVIDUALLY AND AS CO-TRUSTEE OF THE SMUEL S. JAKSICK JR. FAMILY TRUST, KEVIN RILEY, INDIVIDUALLY AND AS FORMER TRUSTEE OF THE SAMUEL S. JAKSICK, JR. OF THE SAMUEL S. JAKSICK JR., FAMILY TRUST AND TRUSTEE OF THE WENDY A JAKSICK BHC FAMILY TRUST

Petitioner and Counter-Respondent

COMES NOW ALEXI JAKSICK FIELDS (Lexi) and hereby submits her Objection to Oetition for Instruction filed herein by Todd Jaksick as Co-Trustees of the Samuel S. jaksick Jr., Family Trust on November 2, 2020. This Objection is made and based upon the following authorities

**ALEXI JAKSICK FIELDS'S OBJECTIONS TO PETITION FOR INSTRUCTION
REGARDING SETTLEMENT AGREEMENT**

DEPT. 15

**ALEXI JAKSICK FIELDS (KNOWN AS ALEXI SMRT) OBJECTIONS TO THE
SETTLEMENT AGREEMENT BETWEEN TODD JAKSICK AND STAN JAKSICK
REGARDING THE SAMUEL S. JAKSICK JR FAMILY TRUST, AND THE SSJ ISSUE
TRUST**

Background

I am the 32 year old daughter of Wendy Jaksick and Jim Smrt, I was born in Reno in May of 1988. I am currently a high school English Teacher in a small town in the Dallas Metroplex called Little Elm, Texas. My husband, Brandon Fields, and I have a daughter, Jaylyn (8) and Brandon Jr (5). My grandfather was Samuel S. Jaksick Jr. and I am a beneficiary of his two trusts, the SSJ Issue Trust and the Samuel S. Jaksick, Jr. Family Trust. My maiden name is Alexi Jaksick Smrt and I have been referred to as Alexi Smrt throughout this litigation. Prior to filing this document I did not receive notification of the ability to file this objection, or be heard on November 19 in court.

Introduction

I was the first and only grandchild of Samuel S. Jaksick, Jr (who I called "grandpa Sam" but everyone else called "Sammy") for 11 years. To describe my childhood as great would be an understatement, I had always felt so grateful and blessed to be a part of such a loving family that

enjoyed spending time together and going on family vacations as often as possible. I truly felt that I was the part of a loving family with such an amazing support system on my mom's side, between my parents, grandpa and uncles, Todd and Stan. We spent a majority of my childhood at the Tahoe house, or at our Cattle Ranch in Eagleville, CA. It was obvious that with all the things my grandpa loved in life, he cherished family the most. This was never more apparent than when my little brother, Luke, was born. My mom had to focus on raising him as a single parent, but Grandpa Sam was there every step of the way. I think at first he stepped in and was so present in Luke's life because he didn't have a father and my grandpa wanted to fill that spot; but then, it became obvious that Grandpa Sam created a bond with Luke that was stronger than any of the rest of the grandchildren. I know that he loved us all, but he had a special place in his heart that belonged to Luke.

When Luke was about 11, he was competing in jumping horses in Southern California often, and Grandpa Sam was always ensuring he had everything he needed to be successful in that venture. Grandpa Sam purchased a beautiful home for my mom, Luke and I and he always kept my mom on his payroll. I think that he saw how his son's wives were able to stay home and he stay at home moms and he thought it was important that my mom had the ability to do the same, which was another reason why he made sure to take care of our family; so, it was no surprise when he left more for Luke than the rest of us grandchildren.

I have been quite involved and right beside my mom throughout this lawsuit and have come to be familiar with my grandfather's two trust documents. I apologize to the court for not having a lawyer to prepare this objection, but after seeing the amount of money my family has spent on attorneys, I am submitting my own objections, alone.

My grandfather spoke often about the Issue Trust and I know that he was proud of it. He always talked about how he wanted everything that he and his father had created to be valued and cherished for many generations to come; he believed it was his legacy and it wasn't able to be changed in any way, he had set up his future generations for life.

I OBJECT TO THE SETTLEMENT AGREEMENT BETWEEN TODD JAKSICK AND STAN JAKSICK IN ITS ENTIRETY

I object to the settlement agreement made between my uncles Stan Jaksick and Todd Jaksick a few days prior to trial, because it had negative impacts on some of the beneficiaries. I can't forget when my mom called me crying, stating, "Stan changed sides of the courtroom." I almost feel partially responsible that she had spent the year and a half prior working with him, because it was hard enough when I realized Todd was never who I thought he was. I couldn't handle the thought of both of my uncles being completely different people than I always thought. I heard many conversations between the two of them, and it was Stan who had been telling my mom even more incriminating information about Todd than she had previously known. So, for Stan to completely play both sides just shows how unethical, selfish and despicable he is, and I am shocked that the trust attorney even allowed this behavior. I know that my mom had said he was agreeing to pay her back money that she was owed and told me they had teamed up to focus on Todd's fraudulent activities. I think it is obvious that Stan's actions are not that of a trustee that is supposed to work in the best interest of the beneficiaries.

PARAGRAPH IIC

I OBJECT TO UNANIMOUS DECISIONS OF ALL TRUSTEES IN THE FAMILY

TRUST

I object to this on grounds that it will never be a fair and unanimous decision if either Todd or Stan disagree, because Todd's high school friend Mike Kimmel is nothing more than an extra vote for Todd. It doesn't seem as though this set up is fair to anyone other than Todd, and this trust was set up to benefit all.

PARAGRAPH IID

I OBJECT TO THE PARAGRAPH THAT ALLOWS STAN'S BUY IN TO LAKE

TAHOE HOUSE

The fact that Stan is offering any money to Todd for the Tahoe family house is baffling. According to Grandpa Sam's trust, Stan was to receive 1/3 of the interest in the Lake Tahoe house, which would give him 33%. So, it's confusing on the terms that Stan is buying into 27% of the house for 1.6 million. I don't even know who actually owns the Tahoe house and to the best of my knowledge it hasn't even been determined who does own it.

PARAGRAPH Dii

I OBJECT TO STAN AND TODD HAVING CONTROL OVER THE VOTING RIGHTS OF TAHOE HOUSE

the ability to Force the sale of Tahoe house. In this paragraph Todd and Stan unanimously agree on decisions for the house taking the power away from Issue Trusts Issue to vote.

The settlement agreement should be denied, the trustee removed, Tahoe sold, the issue Trust Reimbursed, and the remaining interest returned to Family Trust for equal distribution and Family trust distributed.

PARAGRAPH

I OBJECT TO ANY OF TODD'S INDEMNIFICATION AGREEMENT BEING PAID BY THE FAMILY TRUST

I was in a meeting with Todd, Stan, Kevin and my mother, Wendy, reviewing financials when Todd first disclosed this to us. Todd indicated that he did not know of the agreement either, but that he had just found it. Granted, Todd and Stan's agreement does eliminate millions of dollars "owed" to Todd by the family trust, it still makes the trust liable for debt that it does not need. This is baffling to me; that Todd, a trustee, has full control of making sure all of his current and future unknown debts are paid, when it has been shown time and time again how corrupt Todd's actions have been. At this rate, the trust will never be distributed and these types of court hearings will never end. Therefore, the settlement agreement needs to be denied and the trustees removed.

PARAGRAPH Fiii

I OBJECT TO JACKRABBIT CALLS BEING PAID OUT OF THE FAMILY TRUST AS A WHOLE, CONSIDERING THE UNEVEN OWNERSHIP PERCENTAGES.

I do believe that these should be paid out of the family trust, but Stan, Wendy and Todd should be charged their appropriate percentages.

PARAGRAPH G

I OBJECT TO THE FACT THAT STAN AND TODD ARE NOT PAYING THEIR OWN ATTORNEY FEES WITH THEIR OWN MONEY UNTIL THIS LAWSUIT IS OVER

If it is necessary to pay these debts immediately, I have a solution. Todd should repay the family trust \$440,000 and Stan do the same. It's a fact that Todd had Kevin Riley write a check to Todd for \$440,000 from the family trust to pay for the closing costs associated with Fly Geysler/Burning Man Sale, which is an entity outside the trust that sold for 6.5 million dollars, Stan did not agree with this, but in turn, Kevin Riley wrote him a check for the same amount to equalize them. I have not seen any documentation of any of these transactions, but Stan admitted to this occurrence when he was working with my mom prior to changing sides. Therefore the solution to this fraudulent activity is to have Todd and Stan each put those funds back into the family trust to be used to pay their attorney fees as their agreement suggests and removal of the trustees whose only concerns are their own.

PARAGRAPH J

I OBJECT REGARDING THE FUNDING OF LUKE JAKSICK'S TRUST

I object to the agreement funding Luke trust equal to what they funded for their own kids. To my knowledge, the majority of the grandchildren's trusts have still not been funded. This would, once again, change the terms set out by Sam Jaksick of Luke receiving 20% of Wendy's $\frac{1}{3}$ inheritance. The agreement cannot be approved and the trustees should be removed.

CONCLUSION

The only reason Todd and Stan went back to wanting approval of their agreement is to not be removed as trustees. That is obvious, and therefore this agreement should be denied. The trustees believe they are above the law and will continue with their behavior until all the trusts are empty. My grandfather would never have allowed this to happen, especially the mistreatment to the beneficiaries and the abuse to Wendy and Luke.

The only way to uphold the intention of this trust, set up by my grandfather is to remove the trustees, full disclosure of accountings to determine value, return Tahoe to the family trust and follow his trusts rules. I would suggest the trustees, beneficiaries, accountants and notaries all take lie detector tests in order to assist the court with decisions.

This case has completely ruined my faith in our country's justice system. The abuse of the trusts assets, fraudulent activities that have occurred (and continue to occur), and the breach of Todd, Stan and Kevin Riley's fiduciary duties to the beneficiaries is a tragedy. It's been 7.5 years since Grandpa Sam died and there is no resolution in sight, yet approximately 4 million dollars has been spent on attorney fees.

I swear under penalty of perjury that these are true statements to the best of my knowledge.

Signed Alexi Fields

Date 11/16/20

Alexi Jaksick Fields
Beneficiary of Samuel S Jaksick Trust and SSJ Issue Trust

STATUS CONFERENCE

**DECEMBER 7,
2020
HONORABLE
SANDRA A.
UNSWORTH
DEPT. NO. 12
C. COVINGTON
(Clerk)
C. WOLDEN
SUNSHINE
REPORTING
(Recording)**

Hearing conducted by Zoom video conferencing.

Plaintiff, Pierre Hascheff, was not present but was represented by Todd L. Torvinen, Esq.
Defendant, Lynda Hascheff, was not present but was represented by Shawn B. Meador, Esq.

This hearing was held remotely because of the closure of the courthouse at 1 South Sierra Street, Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared by simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada, which was the site of the court session. Counsel/Parties acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules- Part 9 relating to simultaneous audiovisual transmissions and all counsel/parties had no objection to going forward in this manner.

The Court explained the purpose of today's hearing.

Counsel Torvinen stated he is prepared to go forward with the hearing.

Counsel Meador stated he is prepared to go forward.

THE COURT ORDERED: The evidentiary hearing set for December 21, 2020 at 9:00 a.m. is hereby confirmed. The Court waives exhibit binders for this hearing. Any exhibits shall be filed in at least 48 hours in advance.

Court shall prepare the order.

The clerk's minutes are not an order of the Court. They may be altered, amended or superseded by a written order. If the matter was recorded via JAVS, a copy of the proceeding may be request through the Second Judicial District Court Filing Office located at 75 Court Street, Reno, NV 89501. If the matter was reported via Court Reporter, a transcript must be requested directly from the Court Reporter.

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE
16

17 PIERRE A. HASCHEFF,

18 Plaintiff,

19 v.

20 LYNDA L. HASCHEFF,

21 Defendant.

CASE NO. DV13-00656

DEPT. NO. 12

22
23 **LYNDA L. HASCHEFF NOTICE OF HEARING WITNESSES AND EXHIBITS**

24 Pursuant to NRCPC 47, Defendant, LYNDA L. HASCHEFF, hereafter known as
25 Defendant, through her undersigned counsel provides Plaintiff, PIERRE A. HASCHEFF,
26 notice of intended witnesses and exhibits for the Evidentiary Hearing scheduled for December
27 21, 2020, at 9:00 a.m.

28 **WITNESSES:**

1. Lynda L. Hascheff
c/o Woodburn and Wedge
6100 Neil Road, Ste. 500
Reno, Nevada 89511
(775) 688-3000

Ms. Hascheff is the Defendant in this action and has knowledge of all issues.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Pierre A. Hascheff
c/o Todd Torvinen, Esq.
232 Court Street
Reno, Nevada 89501
(775) 825-6066

Pierre A. Hascheff is the Plaintiff in this action and has knowledge of all issues.

3. Lucy Mason
3351 Kincheloe Ct.
Lafayette, CA 94549
(925-) 808-1088

Lucy Mason is the sister to the Defendant in this action and can authenticate email communications, and testify about Defendant's efforts to obtain underlying information and Plaintiff's refusal to provide requested information and insistence that Defendant is not in need of or entitled to the requested information.

4. Todd Torvinen, Esq.
232 Court Street
Reno, Nevada 89501
(775) 825-6066

Todd Torvinen is the Plaintiff's Attorney and can authenticate email communications, and testify about Defendant's efforts to obtain underlying information and Plaintiff's refusal to provide requested information and insistence that Defendant is not in need of or entitled to the requested information.

HEARING EXHIBITS:

Defendant produces and identifies electronic copies of the following documents to Plaintiff's counsel:

EXHIBIT	PARTY	DESCRIPTION	MARKED	OFFERED	ADMITTED
1.	DEFT	Judge Hascheff's Letter & Accompanying Summary Invoice			
2.	DEFT	Declaration of Todd R. Alexander, Esq.			
3.	DEFT	Malpractice Complaint			
4.	DEFT	Email Correspondence between Ms. Hascheff's Counsel and Judge Dated March 1, 2, & 3, 2020			
5.	DEFT	Email from Judge Hascheff Dated April 20, 2020			

6.	DEFT	Email from Counsel Dated April 20, 2020			
7.	DEFT	Letter from Todd Torvinen Dated May 29, 2020			
8.	DEFT	Counsel's Response to the May 29, 2020 Letter from Judge Hascheff's Lawyer Dated June 2, 2020			
9.	DEFT	Counsel's Letter Dated June 11, 2020			
10.	DEFT	Email Between Judge Hascheff and Lucy Mason			
11.	DEFT	Email Between Judge Hascheff and Shawn Meador			
12.	DEFT	Email Between Judge Hascheff and Lucy Mason			
13.	DEFT	Marital Settlement Agreement			
14.	DEFT	Subpoena Duces Tecum			
15.	DEFT	Todd Alexander's Billing Statements			
16.	DEFT	Various Pleadings from Jaksick Case No. PR17-0446 & PR17-00445			

REBUTTAL AND IMPEACHMENT DOCUMENTS; RIGHT TO SUPPLEMENT

Defendant reserves the right to introduce any documents produced by either party for rebuttal and/or impeachment as an exhibit at the Evidentiary Hearing.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information of any party.

DATED this 17th day of December, 2020.

WOODBURN AND WEDGE

By Trangie M. Kelly #14555
 Shawn B. Meador
 Attorneys for Defendant
 Lynda L. Hascheff

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Lynda L. Hascheff Notice of Hearing Witnesses and Exhibits

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 17 day of December, 2020



Kelly Albright

Lynda

I was sued by a client
for malpractice. The case is
on going.

The attorney's invoice is enclosed.

Section 40 of the settlement
agreement requires you must
pay $\frac{1}{2}$ the fees & costs. I don't
believe its fair that I pay the
whole bill. I paid off the balance
so I need you to send me a check
for \$200.90 by Jan. 24 & I'll send you
any additional invoices

Rec'd
1/15/20

P. It.

LH000001

AA 0939

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World (*Malpractice Ins. Co.*)
 BILL THROUGH SERENGETI

Page: 1
 10/23/2019

OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 10

ATTN: Andy Kenney
Insur. adjuster

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$7,351.80

<u>Stmt Date</u>	<u>Stmt #</u>	<u>Billed</u>	<u>Due</u>
02/13/2019	6	826.80	1.80
03/11/2019	7	7,425.00	7,350.00
			<u>7,351.80</u>

10/18/2019 Payment - Thank you PAH Limited LLC -1,000.00

BALANCE DUE \$6,351.80

<u>FEES</u>	<u>EXPENSES</u>	<u>FINANCE CHARGE</u>	<u>PAYMENTS</u>
11,850.00	1.80	0.00	5,500.00

\$6,351.80

*Attys Fees
 For legal malpractice
 claim*

*paid cr # 2308
 12/8/19*

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World
 BILL THROUGH SERENGETI

Page: 1
 08/27/2019

OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 8

ATTN: Andy Kenney

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$11,851.80

<u>Stmt Date</u>	<u>Stmt #</u>	<u>Billed</u>	<u>Due</u>
10/10/2018	1	1,300.00	1,300.00
11/08/2018	3	150.00	150.00
12/07/2018	4	2,150.00	2,150.00
02/13/2019	6	826.80	826.80
03/11/2019	7	7,425.00	7,425.00
			<u>11,851.80</u>
03/25/2019	Payment - Thank you Allied World		-1,300.00
03/25/2019	Payment - Thank you Allied World		-150.00
04/08/2019	Payment - Thank you PAH Limited LLC		-1,000.00
04/16/2019	Payment - Thank you Allied World		-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC		-1,000.00
	TOTAL PAYMENTS		<u>-4,500.00</u>
	BALANCE DUE		<u>\$7,351.80</u>

<u>FEES</u>	<u>EXPENSES</u>	<u>FINANCE CHARGE</u>	<u>PAYMENTS</u>
11,850.00	1.80	0.00	4,500.00

11851.80 - 1450.00 = 10401.80
x 50%
5200.90
4901.90

\$7,351.80

LH000003

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
) ss.
3 COUNTY OF WASHOE)

4 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

5 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
6 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

7 2. I was retained by Hascheff once he received a multi-page subpoena requesting
8 any and all documents, correspondence, communications etc. with respect to his estate
9 planning and related advice to Samuel Jaksick and related parties.

10 3. It was prudent on Hascheff's part to retain counsel immediately because the
11 information requested clearly was aimed at undermining his estate plan and advice which
12 could lead to a malpractice action depending on the jury verdict.

13 4. It was clear that Hascheff was being accused of malfeasance and mishandling
14 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
15 their share of the estate.

16 5. There was also a possible claim by another beneficiary that Hascheff provided
17 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
18 brother and sister with a substantial damage claim against him.

19 6. Hascheff was clearly at risk depending on the outcome of the underlying
20 litigation.

21 7. There were two days of depositions and two days of trial testimony, not to
22 mention countless meetings with various attorneys to protect Hascheff's interests.

23 8. The fees and costs incurred in this case were necessary and reasonable to
24 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
25 million dollar claim against him outside the coverage limits of his applicable insurance policy.

26 9. It should be noted that malpractice actions are not typically filed until the
27 conclusion of the underlying litigation to determine whether the attorney is guilty of
28 malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
1005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6068

EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KENT R. ROBISON, ESQ. – NSB #1167
krobison@rssblaw.com
LINDSAY L. LIDDELL, ESQ. – NSB #14079
lliddell@rssblaw.com
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
Telephone: 775-329-3151
Facsimile: 775-329-7169
*Attorneys for Todd B. Jaksick, Individually, and as Trustee
of the Todd B. Jaksick Family Trust and as Trustee the TBJ Trust*

REC'D & FILED
2010 DEC 26 PM 1:28
SUSAN HENNINGER
C. TORRES CLERK
BY _____

**IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR CARSON CITY**

TODD JAKSICK, Individually, and as Trustee
of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust,

Plaintiffs,

Case No. _____
Dept. No. _____

vs.

PIERRE HASCHEFF,

Defendant.

COMPLAINT

As and for their complaint against the Defendant, Plaintiffs allege as follows:

1. Todd Jaksick ("Todd") is a Trustee of the SSJ's Issue Trust ("Issue Trust").
2. Todd is a Trustee of the Todd B. Jaksick Family Trust and the TBJ Trust.
3. Todd is Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust ("Sam's Family Trust").
4. Todd is a party to an Indemnification Agreement drafted for him by Defendant.
5. Todd is manager of Incline TSS LLC ("TSS"), a company that was devised by Defendant for the purpose of receiving title to a house located on Lake Shore Boulevard, Incline Village, Nevada ("the Lake Tahoe House").
6. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and membership are being challenged as a result of Defendant's legal services.

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

- 1 7. The TBJ Trust is a 23% owner of TSS and its membership interest is being
- 2 challenged as a result of Defendant's legal services.
- 3 8. Defendant was an attorney, and as such, had a duty to use such skill, prudence, and
- 4 diligence as other members of his profession commonly possess and exercise.
- 5 9. As Plaintiffs' attorney, Defendant owed a duty to Plaintiffs to use skill, prudence,
- 6 and diligence as lawyers of ordinary skill and capacity possess in exercising and performing tasks
- 7 which they undertake.
- 8 10. Todd is Trustee of the Todd Jaksick Family Trust, a 23% owner of TSS, owner of
- 9 the Lake Tahoe House. As a result of Defendant's negligence, Todd has been sued in his capacity
- 10 as Trustee of the Todd Jaksick Family Trust.
- 11 11. Todd is Trustee of the TBJ Trust, a 23 % owner of TSS, owner of the Lake Tahoe
- 12 House. As a result of Defendant's negligence, Todd has been sued as Trustee of the TBJ Trust.
- 13 12. Todd is manager of various limited liability companies in which Sam's Family
- 14 Trust holds membership interests. As a result of the Defendant's negligence, Todd is being sued
- 15 in his capacity as manager of the various limited liability companies.
- 16 13. Defendant provided legal services to and for Todd and his father Samuel S. Jaksick
- 17 ("Sam") from 2007 through 2012.
- 18 14. Defendant's legal services, among others, included;
- 19 a. Drafting Todd's Indemnification Agreement;
- 20 b. Creating TSS for the purposes of having an option to buy the Lake Tahoe
- 21 House;
- 22 c. Drafting an option for TSS to acquire title to the Lake Tahoe House;
- 23 d. Drafting Sam's Second Amendment Trust, with Todd as a Co-Trustee and
- 24 beneficiary;
- 25 e. Facilitating TSS's exercise of the option it had to purchase the Lake Tahoe
- 26 House; and
- 27 f. Causing Todd's Family Trust and The TBJ Trust to be 23% owners of TSS.
- 28 15. Defendant's legal services provided to and for Todd, The TBJ Trust and Todd's

1 Family Trust were done in a negligent and careless manner. Those legal services caused Todd to
2 be sued in Second Judicial District Court, Case No. PR17-0045 and Case No. PR17-0046 filed in
3 Washoe County, Nevada.

4 16. Defendant's negligent legal services have resulted and caused the Plaintiffs to
5 sustain substantial damages well in excess of \$100,000. Stanley Jaksick and Wendy Jaksick have
6 both brought claims against Todd in Case No. PR17-00445 and Case No. PR17-00446.

7 17. As a proximate cause of Defendant's negligent and careless legal services provided
8 to and for Plaintiffs, Todd was sued in December of 2017 and February of 2018. Those lawsuits
9 were filed by beneficiaries of Sam's Family Trust and of The Issue Trust and the lawsuits gave
10 Todd first notice of the Defendant's negligence.

11 18. On December 17, 2018, expert reports were exchanged in the lawsuits filed by
12 Sam's daughter, Wendy. These reports first provided Todd, individually and as Trustee, with
13 actual notice of the Defendant's negligence. These reports appear to be based on misinformation
14 and wrongfully accusing Defendant of committing egregious and serious errors in performing
15 estate planning services for Samuel S Jaksick, Jr. Nonetheless, these reports gave Todd his first
16 actual notice of the alleged wrongdoing by the Defendant as follows:

17 a. The estate plan devised by Defendant was a bad one and subjected Todd to
18 lawsuits;

19 b. The Indemnification Agreement was poorly drafted and subjected Todd to
20 conflicts of interest;

21 c. The Lake Tahoe House documents were poorly devised and implemented
22 causing Todd to get sued; and

23 d. The Second Amendment was poorly drafted and implemented, causing
24 Todd to get sued.

25 19. Todd has been directly damaged by Defendant's negligence. The Plaintiffs also
26 contracted with Defendant requiring Defendant to provide competent legal advice and services.
27 Defendant breached the contracts.

28 20. Todd is entitled to be indemnified by Defendant for any sums he pays to Wendy

Robison, Sharp,
Sullivan & Brust
71 Washington St
Reno, NV 89503
(775) 329-3151

1 and/or Stanley Jaksick in the litigation filed by Wendy and Stanley.

2 21. Todd is entitled to recover all fees and costs incurred in defending Wendy's and
3 Stanley's lawsuits.

4 22. Todd is entitled to recover fees and costs incurred in this case.

5 **FIRST CLAIM—NEGLIGENCE**

6 23. Plaintiffs incorporate all prior paragraphs and allegations.

7 24. Defendant and Plaintiffs had a lawyer/client relationship from 2007 to January
8 2013.

9 25. Defendant was engaged as Plaintiffs' counsel and attorney.

10 26. Defendant provided legal services for the Plaintiffs as described hereinabove.

11 27. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
12 membership are being challenged as a result of Defendant's legal services.

13 28. The TBJ Trust is a 23% owner of TSS and its membership interest is being
14 challenged as a result of Defendant's legal services.

15 29. Defendant breached his duty of care to the Plaintiffs as described hereinabove.

16 30. Defendant's breaches of duty constitute legal malpractice and professional
17 negligence.

18 31. Defendant's breaches of duties of care owed to the Plaintiffs, his malpractice and
19 his professional negligence as described herein above caused Plaintiffs to sustain damages in
20 excess of \$15,000.

21 32. Plaintiffs are entitled to recover all damages caused by Defendant's breaches of
22 duties, negligence and malpractice, according to proof, in addition to attorney's fees incurred
23 herein.

24 33. Plaintiffs did not know of and did not have information to be aware of Defendant's
25 negligence, breaches of duties and of the malpractice until December of 2017.

26 **SECOND CLAIM—BREACH OF CONTRACT**

27 34. Plaintiffs incorporate all prior paragraphs and allegations.

28 35. Plaintiffs and Defendant entered into contracts described hereinabove, whereby

1 Defendant was to and did provide legal services for Plaintiffs.

2 36. The contracts for professional services were supported by adequate consideration.

3 37. The contracts were breached by Defendant.

4 38. The Plaintiffs performed all aspects and requirements of the contracts.

5 39. As a result of Defendant's breaches of the contracts described hereinabove,
6 Plaintiffs have sustained consequential damages in excess of \$15,000 and are entitled to fees and
7 costs.

8 **THIRD CLAIM—INDEMNIFICATION**

9 40. Plaintiffs incorporate herein all prior paragraphs and allegations.

10 41. Defendant's negligence and breaches of contract have caused Plaintiffs to be sued
11 by Stanley Jaksick and Wendy Jaksick in Case Nos. PR17-00445 and PR17-00446.

12 42. Plaintiffs adamantly deny any wrongdoing regarding the issues raised in the
13 lawsuits filed by Wendy and Stanley. Plaintiffs are aware of the Defendant's substantial efforts to
14 protect Samuel S. Jaksick, Jr. and his heirs and beneficiaries, and Plaintiffs believe and allege
15 herein that the Defendant proceeded at all times in good faith and with the best interests of the
16 Plaintiffs and Samuel S. Jaksick, Jr. as his first priority. However, if Plaintiffs are found liable to
17 Stanley and/or Wendy or should Plaintiffs, or any one of them, be required to pay in any way
18 Stanley and/or Wendy, Plaintiffs are entitled to recover such amounts by way of indemnification
19 from Defendant.

20 43. Plaintiffs have been obligated to and have paid legal fees for defending Wendy and
21 Stanley's lawsuit in amounts in excess of \$100,000. Plaintiffs are entitled to be indemnified for all
22 fees and costs paid to date and for all fees and costs incurred in the future for defending Plaintiffs
23 in the Wendy and Stanley lawsuits. This indemnification claim has therefore accrued.

24 WHEREFORE, Plaintiffs seek judgment as follows;

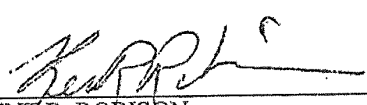
- 25 1. For consequential damages according to proof in excess of \$15,000;
- 26 2. For indemnification of any and all sums Plaintiffs must pay Wendy and/or Stanley;
- 27 3. For fees and costs incurred in the Wendy and Stanley lawsuits;
- 28 4. For fees and costs incurred in this action; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. For such other relief as is appropriate under the circumstances.

DATED this 26th day of December 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



KENT R. ROBISON
LINDSAY L. LIDDELL
*Attorneys for Todd B. Jaksick, Individually, and as
Trustee of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust*

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

EXHIBIT 4

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>

Sent: Sunday, March 01, 2020 11:58 AM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: [SPAM - keyword checking] - Indemnity

I was informed by Lucy Mason that I need to contact you regarding my reimbursement for attorneys fees and costs incurred pursuant to section 40 of the settlement agreement dated September 1, 2013.

The amount owed to date by Lynda is \$4675.90. I provided all the documentation that Lucy requested which I assume you have which includes the billing invoices. I intend to enforce the settlement agreement because I've been sued for malpractice. A subsequent action or set off is necessary because Lynda has refused to indemnify me pursuant to section 40. We can avoid this action by her simply making the payment referenced above within 10 days of this notice.

If the payment is not made within this 10 day I will proceed accordingly.

Thank you for your consideration in this matter.

Sent from my iPad

From: Shawn Meador
Sent: Monday, March 02, 2020 8:37 AM
To: Pierre Hascheff
Cc: Kelly C. Albright
Subject: RE: Indemnity

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

Lynda would certainly like to avoid the need for motion practice if possible. I need the requested information in order to give her thoughtful advice. If you elect, instead, to file a motion, I will ask the court to allow discovery with respect to these issues. I trust that I will receive the requested information within the ten days you have demanded that we respond.

Shawn

LH000013

AA 0954

From: Shawn Meador
Sent: Tuesday, March 03, 2020 4:01 PM
To: Pierre Hascheff
Subject: RE: Indemnity

Pierre

We will have to agree to disagree. I believe that under these circumstances, you have a fiduciary duty to Lynda. I believe that, as a fiduciary, you had an obligation to notify Lynda of the malpractice claim as soon as you became aware of it, and that she is entitled to participate in decisions that impact her financial well-being. I do think she has been harmed by your decision to keep the claim secret from her for so long. How did doing so protect her? I am hopeful that any judge would have serious reservations about that decision. As a judicial officer, I believe the court should hold you to a strict fiduciary duty to Lynda in all of your dealings regarding litigation that impacts her, and I hope, give her the benefit of the doubt on these issues.

I do not believe Lynda is obligated to simply sit back, let you handle the claim in any manner you believe is in your best interests, and then simply pay you whatever you demand she owes you. Nothing in the language of the MSA gives you this authority and control over decisions that impact both of you.

I believe Lynda is entitled to full and complete transparency. I do not believe you have a viable attorney/client privilege claim. NRS 49.115(5). Furthermore, in your discussions with lawyers about the malpractice claim, you are necessarily doing so as her agent and fiduciary if you expect her to pay half the bill, and, thus, I do not believe the law allows you to keep secrets from her. As a fiduciary, how do you protect her interests by hiding the facts from her?

As I previously stated, I do not believe that she is responsible for your costs and fees in the underlying probate proceeding in which you were a percipient witness. Nor do I believe such fees fall within the language your lawyer drafted.

Lynda is prepared to honor her obligation to pay her share of the costs and fees incurred in the malpractice action that have not been covered by insurance. I do not have sufficient information on which to evaluate what she does or does not owe you at this time because you have objected to providing that information. Upon receipt of the requested documents and other information, I will evaluate your demands with Lynda and she will pay what she owes under the agreement your lawyer drafted.

If, instead, you chose to litigate, Lynda will ask the Court to require you to provide the information we have requested and will seek the fees and costs Lynda incurs in such litigation. While she would prefer to resolve this issue without the need for litigation, she is prepared to seek the court's protection if necessary. My gut reaction is that the court would not look on your positions favorably.

If you have any legal authority you believe demonstrates that I am mistaken in the legal positions I have outlined above, I am happy to review and evaluate your authorities with Lynda.

Shawn

LH000014

AA 0955

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador <smeador@woodburnandwedge.com>
Cc: Todd@ToddIorvonenlaw.com
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you.

In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvonen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnify and payment is also additional evidence that your claims are without merit. See also NRCP 16.21 This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days Sent from my iPad

EXHIBIT 6

From: Shawn Meador
Sent: Monday, April 20, 2020 1:03 PM
To: Todd@ToddTorvinenlaw.com; tra@lge.net
Cc: Kelly C. Albright
Subject: RE: Indemnity

Counsel

As you know, under ethical rules, I am not permitted to communicate with another party who I know to be represented by counsel. In prior communications, Judge Hascheff projected that he was acting as his own counsel and had not retained counsel in connection with his indemnity claim. He has now indicated that he has retained Mr. Torvinen in connection with that claim, and therefore, I will not respond directly to his email of today.

I would note that Judge Hascheff takes inherently contradictory positions. He insists that his potential liability for malpractice is a joint or community obligation for which his former wife is equally responsible and that she must pay half of Mr. Alexander's fees, while, at the same time, insisting that Mr. Alexander represents him alone and that he has an attorney client privilege with Mr. Alexander that prevents my client from having basic information in connection with Mr. Alexander's work and his communications with Mr. Alexander about the very claim he insists my client is responsible for.

If, as Judge Hascheff contends, the potential malpractice obligation is a joint or community obligation for which my client is equally responsible, several things flow from that contention. First, if it is a joint or community obligation, Mr. Alexander's professional obligations, and fiduciary duties, necessarily flow to Judge Hascheff and to his former wife jointly. If it is a joint or community obligation, as Judge Hascheff insists, my client's rights and interests are present, existing and equal to Judge Hascheff's rights and interests. In my opinion, there could be no attorney client privilege against my client under these circumstances.

If, as Judge Hascheff, contends, the potential malpractice obligation is a joint or community obligation, my client had a right to know about the claim as soon as Judge Hascheff was aware of it and had an equal and equivalent right to participate in management of the litigation. If Judge Hascheff insists that Mr. Alexander represents him alone, then my client had then, and now has, the right to her own representation in connection with the claim. If she must retain her own counsel because Mr. Alexander represents Judge Hascheff alone and his duties run solely to Judge Hascheff, then Judge Hascheff would be equally responsible for the fees my client is forced to incur to protect herself. They either have joint fees and representation or they each need and must pay separate legal fees for separate representation. Judge Hascheff election to keep the potential claim a secret from my client and then unilaterally determine the manner in which he would handle it, he did so, in my opinion, necessarily, with a fiduciary duty to my client. His choice not to notify her of the claim necessarily precluded her from obtaining her own counsel and protecting herself, thus, reinforcing Judge Hascheff's fiduciary duty to her. He is either acting to protect her interests or not. If he is, he has a fiduciary duty in connection with those efforts.

Nothing in the language of the divorce settlement supports a claim that my client is responsible for fees that Judge Hascheff incurred as a percipient witness. If Judge Hascheff believed that it was strategically valuable for him to have counsel defend him in that role and wanted those fees to be included within the indemnification language, he should have consulted with my client to determine if she agreed that approach was appropriate and in the community's best interests. He made a decision that he believed were in his own best interest without consulting her but now apparently demands that she pay half of the fees arising out of his unilateral decision.

I have previously outlined the information I need to review in order to provide my client with thoughtful and informed advice. Judge Hascheff's insistence that my client must simply accept his demands and that she is not entitled to basic and fundamental information about the very fees he insists she must share, is not supported by the law or common sense. Upon receipt of the information I have requested I will be happy to review and evaluate Judge Hascheff's claims and demands in good faith and will respond promptly.

At this time, I need to know if Mr. Alexander takes the position that his duties flow solely to Judge Hascheff or if his position is that he has an equal and identical obligation and duties to my client in connection with this claim so that my client can make thoughtful decisions about how to protect her rights and interests. Can she rely on Mr. Alexander to protect her interests or should she assume that his role is to protect Judge Hascheff's interests? I need to know if Mr. Alexander shares Judge Hascheff's contention that their communications are protected by an attorney client privilege and if their thought processes in connection with legal strategy are protected by an attorney client or work product privilege as against my client who is being asked to pay half of Mr. Alexander's bill.

I continue to look forward to receipt of the information I have previously requested so that I can give my client appropriate advice. If Judge Hascheff determines that it is in his best interest to initiate litigation against my client, I will, necessarily, be forced to raise these same issues with the court and will request discovery to obtain the information I have requested.

In the meantime, if you have any questions or concerns, please do not hesitate to contact me

Shawn

LH000018

AA 0961

**THE LAW OFFICE OF
TODD L. TORVINEN**

CHARTERED

232 COURT STREET RENO, NEVADA 89501
PHONE: (775) 825-6066 FAX: (775) 334-6063
E-MAIL: todd@toddlorvinenlaw.com

Certified Public Accountant (NV)
Certified Estate Planning Law Specialist (EPLS)

May 29, 2020

Via RCMS

Shawn B. Meador, Esq.
Woodburn and Wedge Attorneys
6100 Neil Rd., Suite 500
Reno, NV 89511

Re: Hascheff MSA Indemnity Clause

Dear Mr. Meador:

I write on behalf of my client, Judge Hascheff. Enclosed please find the redacted billing statements from Todd Alexander, Esq., who represents Judge Hascheff regarding the malpractice action. Judge Hascheff previously provided these billing statements to Lucy Mason, Lynda Hascheff's sister. Also enclosed please find Mr. Alexander's Declaration dated April 10, 2020, generally explaining the need for counsel given the real threat and close in time filed malpractice action. The Declaration also describes the significant legal services required in light of the gravity of the threat and the malpractice action.

It is my understanding that on February 5, 2020, Mr. Hascheff emailed your client's sister, Lucy Mason (also an attorney) the: (1) canceled checks for the payment of attorney fees related to the malpractice action, (2) the endorsement number showing malpractice tail coverage, (3), the actual policy and the tail coverage, (4) correspondence between him and the carrier's adjuster, (5) the Hascheff Marital Settlement Agreement, and (6) the 40 page subpoena demanding production of estate planning documents and other documents related to his estate planning advice. I also understand that at or near the same time in early February, Mr. Hascheff emailed Lucy Mason a copy of the malpractice complaint against him filed on December 26, 2018. I further understand that you received those documents.

Judge Hascheff forwarded his email to you dated March 1, 2020, invoking the 10-day notice and the required information triggering liability for attorney fees incurred for enforcement pursuant to Section 35.2 of the MARITAL SETTLEMENT AGREEMENT dated September 1, 2013 ("MSA"). You are probably also aware that MSA Section 40

LH000019

AA 0963

Shawn Meador, Esq.
May 26, 2020
Page 2

specifically requires your client to indemnify Mr. Hascheff for "one half (1/2) the costs of any defense and judgment" relating to a malpractice action.

In the March 1, 2020, email to you, Mr. Hascheff indicated as of that date, one half (1/2) of the attorney fees incurred related to the malpractice defense due from Lynda amounted to the sum of \$4675.90. Since March 11, 2020, Mr. Hascheff has incurred fees with my office related to enforcement of Section 40 which now total \$1687.50. As a result, under the terms of the MSA, your client owes the sum of \$6363.40 (\$4675.90 + \$1687.50) to Judge Hascheff. This does not include Mr. Alexander's fees and costs not yet billed in preparation of the Declaration and other time related to the malpractice action.

Hopefully, your client has interest in resolving this matter now. Judge Hascheff is willing to accept payments of \$1500 per month commencing June 15, 2020, until fully paid. Note that Judge Hascheff is also willing to waive interest accrual on the balance due to which he is entitled under NRS 99.040 as an accommodation to your client if your client accepts the terms described above.

Judge Hascheff requests your client's response to me within 10 days of the date of this letter. If necessary, Judge Hascheff will seek enforcement of the MSA indemnity provision thereafter. Thank you for your professionalism and your courtesies in advance.

Respectfully,



Todd L. Torvinen, Esq.

Enclosures

Note: This writing contains an offer in compromise under NRS 48.105. As a result, it may not later be used as prohibited specifically by NRS 48.105.

LH000020

AA 0964



June 2, 2020

VIA Email & Regular USPS Mail

todd@toddltorvinenlaw.com

Law Office of Todd L. Torvinen
Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: Hascheff MSA/Fiduciary Duties

Dear Mr. Torvinen:

I am in receipt of your letter of May 29, 2020, in which you repeat the demands Judge Hascheff's previously made. Unfortunately, from my perspective, you elected not to address the issues and concerns raised in my email of April 20, 2020.

I would note that Mr. Alexander did address some of my concerns indirectly in his Declaration dated April 10, 2020, which you included in your letter of May 29, 2020. Given that Mr. Alexander's declaration was signed ten days prior to my email, it was clearly not written to address the concerns raised in my April 20, 2020, email and projects that all of the fees my client has incurred in attempting to obtain basic information to allow her to make thoughtful decisions was just a waste of time and money and that Judge Hascheff was simply trying to create evidence for future motion practice.

In his declaration, however, Mr. Alexander unequivocally states that he represents Judge Hascheff and that his professional duty runs solely to Judge Hascheff. He asserts that there is an attorney client privilege between him and Judge Hascheff that shields him from disclosing information to my client, such as discussions he had with Judge Hascheff about his risk of liability. At the same time, however, you insist that Ms. Hascheff must pay half of his bill for those discussions and his advice. Mr. Alexander, in fact, incredibly suggests that his election to involve himself in the dispute between our clients regarding the Marital Settlement Agreement and Decree of Divorce is, in some way, related to the defense of the malpractice action. While I disagree, it reflects that Ms. Hascheff may not rely on Mr. Alexander to protect her interests in connection with the malpractice litigation, but instead will need her own lawyer.

Judge Hascheff insists that any liability arising out of the malpractice claim is a joint or community debt for which Ms. Hascheff is equally responsible. I am unaware of any legal theory or basis on which Judge Hascheff could claim that he has the unilateral right to make all litigation decisions regarding this alleged joint or community obligation. Similarly, I am

LH000021

AA 0966

Todd Torvinen, Esq.
June 2, 2020
Page 2



unaware of any authority that would support his claim that he may keep the facts and legal advice he received, on which he based his litigation decisions, a secret from Ms. Hascheff, but that Ms. Hascheff must pay half of this legal fees for obtaining the advice. If you are aware of such authority, I would be more than happy to review and evaluate the authority you cite.

This is particularly troubling in light of the opinions asserted in paragraphs 3, 4, 5, 6, 7 and 8 of Mr. Alexander's Declaration. What specific facts support his sworn conclusions that Judge Hascheff was clearly at risk of substantial, potentially multimillion-dollar damage award? Judge Hascheff is only clearly at risk of such damages if there are facts that suggest he breached his professional obligation and failed to exercise the requisite standard of care, and as a result a person to whom he owed professional duties was proximately harmed by his breach of duty. Is Mr. Alexander suggesting that such facts exist?

I would also note that the malpractice complaint alleges (I obviously have no knowledge if allegations are accurate) that Pierre represented Todd Jaksick individually and as trustee and beneficiary of his father's trust, that he represented Sam Jaksick, perhaps the trust itself and Todd's family trust. The potential conflicts of interest jump off the page. Did Judge Hascheff obtain written conflict waivers?

Ms. Hascheff cannot possibly evaluate whether Judge Hascheff's decision to retain counsel to represent him in connection with collateral litigation was "prudent" and in her best interest without knowing the facts and risks. In breach of his fiduciary duty, Judge Hascheff did not afford her the courtesy of providing her with this information. Rather, he unilaterally made all decisions and then sent her a bill, while insisting he had every right to keep everything secret from her. He did so for at least a year and potentially much longer.

I would note that the malpractice insurance company has determined that it is appropriate to spend up to \$2,500 in responding to subpoenas such as those at issue here. The insurance company has paid that sum. The insurance company clearly does not believe that all of these expenses that Judge Hascheff demands that my client pay, that are related to the subpoena, deposition and trial testimony, are "claim expenses" related to the malpractice claim. If the insurance company, whose business it is to address what conduct is necessary in connection with a potential malpractice claim, believes that \$2,500 is reasonable, I would rely more heavily on that decision than I would on secret decision-making between Judge Hascheff and his counsel.

Ms. Hascheff remains prepared to pay her one-half of the total fees and expenses related to the malpractice action. From my review of the bills provided by Mr. Alexander, the only fees I can see that are directly related to the malpractice action come to \$95. I appreciate, although disagree with, your claim that my client is responsible for any fees and costs Judge Hascheff elects to incur that he deems to be prudent in connection with collateral lawsuits. However, I need to know what the fees and costs have been that are directly related to the malpractice action, so that Ms. Hascheff can pay her share of the undisputed fees and costs.

Todd Torvinen, Esq.
June 2, 2020
Page 3



I would note that under the insurance policy, there is a \$10,000 retention. The limit of my client's obligation, therefore, would be \$5,000, unless there is ultimately a judgment in excess of policy limits. And yet, Judge Hascheff's position would potentially result in my client having a legal obligation well in excess of that \$5,000. That excess exposure, according to his position, is entirely within his control, based on decisions he unilaterally makes based on facts and legal advice that he insists he can keep secret from my client. Again, if you have authority in support of this extraordinary position, I am more than happy to review and evaluate that authority with my client.

In addition, Judge Hascheff deemed it necessary and prudent to have counsel in connection with his role as a percipient witness and with respect to legal advice about how best to approach the malpractice claim and litigation. He is well experienced lawyer. My client is not a lawyer and has no legal training. Her interests in obtaining legal advice are greater than, not less than Judge Hascheff's. Judge Hascheff's counsel has made it clear that his duty is to Judge Hascheff and that his discussions and the advice he gave Judge Hascheff is confidential. Thus, it is, necessarily, of no value to my client.

If she is responsible for the legal fees Judge Hascheff incurs to obtain such advice, he is, necessarily, equally responsible for fees that she incurs in connection with these matters. To date, she has incurred approximately \$5,600 in fees simply to try to obtain the basic information we have repeatedly requested. Any claim Judge Hascheff has should, therefore, be offset by one-half of her fees.

Thus, while it appears entirely possible that we may have to litigate the parties' respective rights and obligations under the language of the MSA you drafted, we do not have to litigate the issue of the fees directly related to the malpractice action as opposed to the fees your client made a strategic decision to incur as a percipient witness in a collateral lawsuit.

If litigation becomes necessary, I will, among other things, request that the Court allow me to conduct discovery with respect to when Mr. Hascheff knew or should have known of the facts on which the underlying malpractice claim is premised. The complaint in the malpractice action reflects that Judge Hascheff's attorney client relationship with the plaintiffs ended before the MSA was signed and Decree entered. The potential conflict issues noted above necessarily existed at the time the work was done. The discovery, necessarily, will focus on whether Judge Hascheff knew or should have known there was a potential risk of a malpractice claim that he did not disclose contrary to paragraph 29 of the MSA.

Should Judge Hascheff decide that finding resolution makes more sense than litigation, I might suggest that his demands on my client be stayed until the malpractice action is finally resolved and the total sums in dispute can be identified. If he believes that litigation of the issue noted above are in his best interest, so be it, my client is prepared to defend herself and seek to recover the legal fees she has and will incur.

LH000023

AA 0968

Todd Torvinen, Esq.
June 2, 2020
Page 4



Pursuant to paragraph 35.2 of the parties' MSA, if we have not been able to reach an agreement within ten days of the date of this letter my client will file a declaratory relief action so that the court can determine my client's liability under these facts. To assure there is no confusion, my client's position is that she is responsible for one-half of the fees and costs associated with the malpractice action, that she is not responsible for Judge Hascheff's fees and costs as a percipient witness and that if Judge Hascheff knew or should have known the facts on which the malpractice claim was premised, this part of their MSA was obtained by fraud. If you have any questions please do not hesitate to ask.

Sincerely,
Dictated but not read
Shawn B Meador, Esq.

Cc: L. Hascheff

LF000024

AA 0969

EXHIBIT 9



June 11, 2020

VIA EMAIL & REGULAR USPS MAIL

todd@toddtorvinenlaw.com

Law Office of Todd L. Torvinen
Todd Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: Hascheff

Dear Mr. Torvinen:

To assure the accuracy of our motion, I need the following information and documents:

1. To know the current status of the malpractice action;
2. To know the current status of the underlying lawsuit among the Jacsick siblings;
3. A copy of the "multi-page subpoena" referenced in paragraph 2 of Mr. Alexander's declaration that allowed him to speculate that the subpoena could lead to a malpractice action, given that there could only be a meaningful risk of malpractice liability if documents in the file reflected that the work Judge Hascheff did or the advice he gave was in breach of his professional obligations and duties to his clients – if those documents showed he did nothing wrong there would be no basis for such an opinion;
4. To know what documents or other information sought by that subpoena were such that they clearly reflected that they were attempting to undermine "his estate plan and advice which could lead to a malpractice action" as set forth in paragraph 3 of Mr. Alexander's declaration;
5. What facts, circumstances, and written documents led Mr. Alexander to conclude that Judge Hascheff was at risk of a multi-million dollar claim against him;
6. Whether Mr. Alexander still opines that Judge Hascheff is at risk of a multi-million dollar judgement in excess of policy limits.



7. Copies of the written conflict waivers that Judge Hascheff obtained when he was, at least according to the malpractice complaint, simultaneously representing multiple clients with potentially conflicting interests.

Sincerely,

Dictated not read

Shawn B Meador, Esq.

EXHIBIT 10

From: Pierre Hascheff [mailto:pierre@pahascheff.com]
Sent: Wednesday, February 05, 2020 4:42 PM
To: Lucy Mason
Subject: Re: Attached Image

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege. There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

LH000027

AA 0974

EXHIBIT 11

exhibit 3

Sent: Monday, March 02, 2020 2:47 PM
To: Shawn Meador <smeador@woodburnandwedge.com>
Subject: Re: Indemnity

It will be quicker to get the documents from Lucy. Took me a lot of time to locate the documents and make the copies. I don't have that kind of time now to go back and do it all again.

I've already sent correspondence to Lucy explaining the delay. There has been absolutely no prejudice for notifying her after the underlying litigation was mostly concluded. There was absolutely nothing you or anyone could do during the underlying litigation. Also it is common practice to require a lawyer in the underlying litigation to testify first and determine if any errors were made then file a malpractice action. To suggest that I should be deposed for three days and a witness at trial for two days without the benefit of the lawyer to protect our interest and avoid a malpractice claim is simply foolish. The threat of malpractice was a common thread throughout the litigation. My lawyer was there to provide a defense for the pending malpractice action.

The time entries contain attorney-client communications. I am not going to waive the privilege. Lucy has all of the invoices showing what the insurance company paid. I believe it was only \$2500 the rest I had to pay. The information Lucy has is all you need to evaluate the claim. The indemnity agreement is very broad and does not say that the fees and costs must be incurred after the malpractice case is filed.

Sent from my iPad

On Mar 2, 2020, at 8:37 AM, Shawn Meador
<smeador@woodburnandwedge.com> wrote:

LH000028

AA 0976

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

LH000029

AA 0977

EXHIBIT 12

From: Pierre Hascheff [mailto:pierre@pahascheff.com]
Sent: Wednesday, February 05, 2020 4:42 PM
To: Lucy Mason
Subject: Re: Attached Image

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.
There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

LH000030

AA 0979

From: Lucy Mason lucy.masonsena@yahoo.com
Subject: Your demand to Lynda Hascheff
Date: Feb 4, 2020 at 11:42:04 AM
To: Pierre Hascheff pierre@pahascheff.com
Cc: smeador@woodburnandwedge.com

EXHIBIT 2

Pierre --

Lynda forwarded me the invoices and letter you sent her in the mail. It appears that you are demanding that she pay half the entire amount billed in the malpractice matter, as opposed to half the amount you have actually paid. The invoices reflect that the insurance company (Allied World) has paid a large amount to date and you have paid \$3,000. There is a handwritten note that you have paid the balance of the remaining bill dated 10/23/19, but there is no canceled check or subsequent invoice reflecting that.

Please provide the following documentation so that we can assess your demand:

1. A copy of the insurance policy pursuant to which you have made a claim
2. All correspondence with your insurance company and adjuster about the claim
3. All detailed billings/invoices you have received to date from Lemons, Grundy or any other firm working on your behalf on this matter, including all time entries by attorneys working on the claim
4. All proof of payment you claim you have made on any bills reflected in 3) above
5. All relevant pleadings in this matter, including but not limited to your response to the complaint

Finally, you had notice of this potential claim for well over 16 months, and undoubtedly much longer. You have a fiduciary duty to Lynda as it relates to this claim to keep her apprised and in the loop. By asking me to send you this note in response to your demand, she is in no way waiving whatever recourse she may have for your breach of that duty. I am helping Lynda as her sister, not as an attorney. Should this require the need for legal services, she will hire an attorney.

Thank you.

Lucy

From: Pierre Hascheff [mailto:pierre@pahascheff.com]
Sent: Sunday, January 26, 2020 7:59 AM
To: Lucy Mason
Subject: Pwd: Attached Image

Here's a copy of the Page requiring reimbursement for attorneys fees and costs. I do not have Lynda's new email. So I'm forwarding these documents to you. If that's a problem let me know

Sent from my iPad

LH000031

AA 0980

EXHIBIT 13

MARITAL SETTLEMENT AGREEMENT

This Marital Settlement Agreement is entered into effective September 1, 2013, between **Pierre A. Hascheff** (Husband) and **Lynda Lee Hascheff** (Wife) in order to resolve all issues between them with regard to the dissolution of their marriage. The parties intend this Agreement to be a final and complete settlement of all of their rights and obligations to each other arising out of their marriage, including without limitation, all past and present interspousal claims of any kind that either may have against the other, except as otherwise provided in this Agreement.

Therefore, Husband and Wife agree as follows:

RECITALS

Marriage and Separation

1. Husband and Wife were married on September 8, 1990 in Reno, Washoe County, Nevada, and have thereafter, been married to each other continuously. They have lived separate and apart since April 12, 2012. The duration of the marriage is 23 years.

Grounds for Divorce

2. Irreconcilable differences have arisen between Husband and Wife, which have led to an irremediable breakdown of the marriage. There is no possibility of saving the marriage through counseling or other means, and the parties have agreed to the dissolution their marriage.

Children of Marriage

The parties have no minor children. Wife may claim both children as dependents to the extent she is eligible to do so. Notwithstanding the previous, if wife receives no tax benefit from said dependents, then Husband may claim one or both.

Legal Proceedings

3. The original of this Agreement shall be filed with the Court. The court will be requested to (i) approve the entire Agreement as fair and equitable; (ii) order each party to comply with all of its executory provisions; and (iii) merge the provisions of the Agreement into the Decree Divorce. This Agreement is not conditioned upon the merger with or entry of the Decree of Divorce.

PH *LL*

SPOUSAL SUPPORT

Payments of Spousal Support

4. Husband shall pay spousal support to Wife in the sum of \$4,400.00 per month for three (3) years until August 30, 2016. Commencing on September 1, 2016, Husband will pay spousal support of \$3,400.00 until he retires. Payments shall be due on or before the first day of the month. The alimony may be readjusted accordingly in the event of changed circumstances. Wife acknowledges the alimony and Wife's PERS survivor benefit is a material consideration and material part of this settlement.

Termination of Spousal Support

5. The payments of spousal support provided in this Agreement, and the court's jurisdiction to order spousal support, shall terminate on the death of either party or on the remarriage of Wife before the above termination date.

Modification of Amount of Spousal Support

6. The amount of the periodic payments of spousal support provided in this Agreement may be modified either upward or downward or terminated by any court in the future on a showing of change of circumstances.

Alimony Tax Treatment

7.1. All payments to or on behalf of Wife for her support, as set forth above, are intended to qualify as alimony under Internal Revenue Code sections 71 and 215, and are to be included in Wife's gross income and deducted by Husband as provided in those Code sections.

7.2. Wife agrees that she shall report as income on her federal and state income tax returns for the year of receipt all sums paid to her, or on her behalf, by Husband under this Agreement, and that she shall pay any resulting taxes due. Wife agrees to indemnify and hold Husband harmless from any federal and state income tax obligation that he may incur by reason of Wife's failure to report as income, and pay the taxes due on, sums paid to her or on her behalf as spousal support under this Agreement.

Spousal Support Provisions Contingent on Tax Laws

8. The parties have agreed on the spousal support provisions of this Agreement in light of the existing federal and state income tax laws, which provide that spousal support is deductible by the payor and taxable to the payee. If the laws are changed so that spousal support payments shall be taxable to the payor and not to payee, the issue of spousal support shall be subject to future negotiation, agreement, or order of court.

Notice of Occurrence of Contingencies

Husband PA Wife JR Page 2 of 16

9. Husband and Wife shall each notify the other promptly and in writing of the happening of any contingency that affects the right or duty of either party to receive or make spousal support payments under the terms of this Agreement. Any overpayments of spousal support made by Husband after the occurrence of such a contingency and before receipt of the notice shall immediately be refunded by Wife, or set off against future payments after first applying the overpayments to any support amounts that are in default.

10. Wife acknowledges Husband has no obligation to provide Wife with health insurance coverage. Husband will cooperate with Wife so she may obtain COBRA insurance coverage within sixty (60) days after entry of decree of divorce. Husband will pay one-half (1/2) the cost of the COBRA premium for a period of eighteen (18) months provided, however, if Wife obtains her own coverage through her employment, the COBRA payments shall cease. Husband's payment share of COBRA premium is not considered alimony. Wife acknowledges Husband can no longer carry health insurance on Wife after the divorce. In lieu of COBRA, Wife may obtain her own health insurance policy in the private market or through the exchange offered through the Affordable Care Act (So-Called Obamacare). In the event she does so, the same terms and conditions shall apply as if she had obtained COBRA continuation coverage.

DIVISION OF PROPERTY

Division of Community Assets

11. Husband and Wife agree that their community property shall be divided between them as set forth below.

11.1 The parties further agree that this Agreement effects a substantially equal division of their community property. Any equalization is forever waived.

11.2 Riverside Drive office and back house located at 1029 and 1029 ½ will be sold and the net proceeds less expenses, storage and relocation costs will be shared equally. Each party shall bear one half of the tax consequences as a result of the sale.

11.3 The Wife will receive the Alpine Meadows property and the Pineridge property valued at \$360,000.00 and \$120,000.00 respectively. The property at 120 Juanita Drive, Incline Village, Nevada will be sold. Husband will receive the 2555 Manzanita property valued at \$760,000.00. The Arizona property at 2128 Catamaran will be sold. The parties will jointly agree to the initial and any subsequent changes to the listing price and terms of any sale described above. If the parties are unable to agree on the terms of any sale, the respective realtor will mediate the dispute and if the parties still cannot agree, the Court will decide the issue. The net proceeds of any sales described above, after taxes, storages, other expenses and moving costs will be divided equally. Each party reserves the right to use their one-half (1/2) of the net proceeds in a tax free exchange under IRC 1031.

PA
JH

LH000034

AA 0984

Assets Assigned to Wife

12. Husband releases, transfers, and assigns to Wife, as her sole and separate property, all of his right, title, and interest in and to the assets listed below. Husband further agrees to execute all documents that may be required to establish or confirm Wife's sole ownership of all listed assets as described on **Exhibit 1** attached hereto and incorporated by reference.

Assets Assigned to Husband

13. Wife releases, transfers, and assigns to Husband, as his sole and separate property, all of her right, title, and interest in and to the assets listed below. Wife further agrees to execute any and all documents that may be required to establish or confirm Husband's sole ownership of any listed asset as described on **Exhibit 1** attached hereto and incorporated by reference.

Encumbrances and Litigation

14. With regard to all property assigned under this Agreement, except as may otherwise be specifically provided in this Agreement, the assignee spouse assumes all encumbrances and liens on the property and agrees to indemnify and hold the other party free and harmless from any claim or liability that the other party may suffer or may be required to pay because of those encumbrances or liens, including the payment of reasonable attorney fees. Wife and Husband shall refinance their respective properties to remove and release the other from the existing loan and liability within one (1) year.

Insurance

15. The Husband's current group term life insurance with Washoe County and the NY Life insurance shall, as of the effective date of this Agreement, remain with Husband as owner and Wife shall receive 100% of the net proceeds of Husband's Washoe County and NY life insurance policy if ~~Husband dies on or before January 1, 2019~~. Husband has no obligation to ^{PA} maintain the NY Life policy after December 31, 2014. Husband shall be considered the owner of the insurance policy, and shall pay all policy premiums coming due on and after that date, for so long as the policy is maintained in force. Wife acknowledges Husband's Washoe County policy will terminate if Husband is no longer a county employee.

Social Security

16. The Parties retain their respective Social Security benefits, including any derivative rights to which they might be entitled by virtue of their marriage to each other, as their separate property pursuant to federal law.

Pierre A. Hascheff, Chtd. Profit-Sharing Plan

Husband PA Wife lh Page 4 of 16

17.1. Wife's 1/2 interest in the Pierre A. Hascheff, Chtd., Profit-Sharing Plan shall be implemented by a separate Qualified Domestic Relations Order (QDRO). Wife shall have the right to elect to have her interest in the Pierre A. Hascheff, Chtd., Profit-Sharing Plan allocated to a separate account for her (if permitted by the Pierre A. Hascheff, Chtd., Profit-Sharing Plan); or distributed to her directly; or distributed to an IRA or eligible retirement plan of which she is a beneficiary. If Husband predeceases Wife, payment to Wife shall nonetheless be made under the terms of this Agreement. If Wife dies before full payment to her has been made, the amount unpaid shall be distributed to the beneficiary designated in writing by Wife to the plan administrator of the Pierre A. Hascheff, Chtd., Profit-Sharing Plan in the manner prescribed by the plan administrator, or if no beneficiary has been so designated, to Wife's estate.

17.2. Wife shall report, pay, and be responsible for all taxes due on amounts received by her from the Pierre A. Hascheff, Chtd., Profit-Sharing Plan. Under the Internal Revenue Code, the nonparticipant spouse shall be treated as the distributee of any distribution or payment made to her under a QDRO. As such, all amounts distributed to the nonparticipant from the Pierre A. Hascheff, Chtd., Profit-Sharing Plan are otherwise includible in income shall be taxable to the nonparticipant to the extent not rolled over to another qualified plan or Individual Retirement Account. The Wife shall indemnify Husband for any taxes (including interest and penalties, and "tax on the tax", if any) that he may be required to pay to any taxing authority in connection with any plan distribution. The parties agree to cooperate in filing consistent tax returns in connection with distributions received from Pierre A. Hascheff, Chtd., Profit-Sharing Plan. The court shall reserve jurisdiction to resolve any disputes in connection with any tax return. If either spouse should breach his or her reporting or payment obligations, he or she shall indemnify the other spouse for any cost, fee, or other expense (including but not limited to accounting and attorney's fees) incurred by the other spouse in connection with any audit or examination of the other spouse's tax return, relative to accomplishing the tax result described above.

Husband's PERS Benefits

18.1. Wife is entitled to, and awarded as her separate property, her community interest in and benefits of Husband's Public Employees' Retirement System Nevada ("PERS" or the "System") to which Husband is or may become entitled on account of his past, present, and future employment.

18.2. Husband will elect a form of benefit that would pay to Wife (in the event of Husband's death during pay status prior to that of Wife), a sum equal to the amount that would be paid to Wife under Option 6 with the specific sum payable to Wife if she survives Husband. The Wife's share of Husband's pension during the parties' joint lives shall be determined under the "wait and see" approach described in the *Gemma* and *Fondi* cases. The option 6 survivors amount payable to the Wife upon the death of the Husband shall be the sum of \$3,200.00 per month, adjusted for any COLA increases which occur after the date of the Husband's retirement. The parties agree to equally bear during their joint lives when Husband is retired, the premium cost (the reduction in the monthly benefit) between option 1 and option 6. By way of example, if Husband's unmodified option 1 benefit is \$8,200 per month, and the option 6 benefit is \$7,000 per month, the premium cost is therefore \$1,200 per month. Upon retirement, for example, if Husband receives 60% of the benefit and Wife receives 40% of the benefit, then without

PA
ju

LH000036

AA 0986

adjustment Husband would be paying 60% of the \$1,200 premium cost per month (\$720); and Wife would be paying 40% of the \$1,200 premium cost per month (\$480). In order to equally divide the premium cost of \$1,200, 10% of the total premium cost (\$120) would be subtracted from Wife's monthly benefit, and \$120 would be added to Husband's monthly benefit during the joint lives of the parties. In the event Wife predeceases the Husband, the benefits revert to the Husband.

18.3. In the event Husband dies before he retires and before starts receiving PERS benefits, Wife shall receive 100% of any survivor benefits provided Husband dies on or before January 1, 2019. If Husband dies after January 1, 2019, but before he retires, Wife will receive 75% and the children will receive 25% of said benefits to be shared equally by the children. Wife and Husband agree to establish an escrow and/or trust for the children's share of said survivor benefits.

18.4. Husband is awarded the balance of any and all the benefits as his separate property from PERS, whether fixed, accrued, contingent or otherwise.

18.5. During the joint lives of the parties, the System shall directly pay Wife her interest in the monthly retirement allowance.

18.6. Wife understands that she will be entitled to a distribution of retirement benefits under PERS although Husband is not yet retired. Wife acknowledges her right to make a "Gemma election" to obtain an immediate distribution of her interest in these retirement benefits on or after the date when Husband is first eligible to draw a retirement allowance from PERS (irrespective of his decision not to retire). Wife hereby waives her right to make a "Gemma election".

18.7. The Parties will enter into a stipulated Qualified Domestic Relations Order to divide the retirement benefits provided for by the Public Employees' Retirement System Nevada. The court shall retain jurisdiction to resolve any disputes concerning the content of the Qualified Domestic Relations Order or to implement or correct any nonqualifying provision by issuing an amended or subsequent order. Until a Qualified Domestic Relations Order is executed by the parties and qualified by the administrators or the court, Husband shall not make or accept any election, or take any action, under the Public Employees' Retirement System Nevada (nor shall the Plan accept any elections) that might adversely affect Wife's interest in the Plan without Wife's prior written consent or further court order upon ninety (90) days' notice to Wife (which notice may be shortened by the court upon a showing of good cause). Pending the preparation of the above order, the parties intend for this Agreement, when incorporated into a Decree of Divorce, to constitute a Qualified Domestic Relations Order for the Public Employees' Retirement System Nevada (if this becomes necessary). The parties stipulate that to the extent that any provision of this Agreement (when incorporated into a Decree of Divorce) pertaining to qualified plans is not found to constitute a Qualified Domestic Relations Order, the court shall retain jurisdiction to implement or correct any nonqualifying provision by issuing an amended or subsequent Qualified Domestic Relations Order.

Division of Personal Property

Husband PIA Wife W Page 6 of 16

LH000037

AA 0987

18.8. The parties will make a division of all remaining items of furniture, furnishings, and personal property to the extent they can agree. Thereafter, items will be allocated in the following manner. The parties shall flip a coin to determine which party will make the first choice of items. The other party will have the second and third choice of items. The party who made the first choice will have the fourth choice, and all choices after that will alternate between the parties until all items are selected. Selections shall be without regard to value. Parties will retain respective furniture in their residence.

Assets Assigned to Parties' Children

19. The following assets shall be owned as follows:

19.1 The 2011 Toyota RAV4 by Wife and insured by and paid for by Wife; and

19.2 The 2008 Jeep by Husband and insured by and paid for by Husband.

19.3 To the extent allowed, Wife's car and the daughter's car (RAV4) will remain under the current umbrella policy and Wife will reimburse Husband their respective share of the total premium.

19.4 Any other assets the parties allocated the children as described elsewhere in this Agreement.

The assets agreed to be owned by the children are not a part of the division of community property of the parties. Assets may be transferred to a minor under the Uniform Gifts to Minors Act, as agreed to by the parties.

Allocation of Community Debts

20. Husband and Wife agree that their community debts and obligations shall be allocated between them as set forth below. The parties further agree that this Agreement effects an equal division of their community debts and obligations.

Debts Assumed by Husband

21. Each party agrees to assume and pay the debts as disclosed on Exhibit 1. Husband further agrees (1) to indemnify and hold Wife harmless from the above debts, and (2) to defend Wife, at his own expense, against any claim, action, or proceeding that is hereafter brought seeking to hold Wife liable on account of these debts, including the payment of reasonable attorney fees incurred by Wife in defense of any such claim, action, or proceeding. Wife agrees Husband may payoff the Sam's Club debt with the community property funds and Wife will obtain her own Sam's Club account card. Husband will retain the current Sam's Club account. Husband will assume his credit card debt.

PR
JHK

LH000038

AA 0988

Debts Assumed by Wife

22. Each party agrees to assume and pay the debts as disclosed on Exhibit 1. Wife further agrees (1) to indemnify and hold Husband harmless from the above debts, and (2) to defend Husband, at her own expense, against any claim, action, or proceeding that is hereafter brought seeking to hold Husband liable on account of these debts, including the payment of reasonable attorney fees incurred by Husband in defense of any such claim, action, or proceeding. Husband will pay Wife's credit card debt up to \$6,000.00 from the parties joint account in accordance with Exhibit 1. Wife will assume her credit card debt in excess of \$6,000.00.

Division of Omitted Assets

23. If, after the execution of this Agreement, any asset is discovered to exist that was not listed in and disposed of by this Agreement and that would have been community or quasi-community property of the parties, that omitted asset shall be divided equally between the parties. If, however, the existence of the asset was known to one of the parties at the time of execution of this Agreement, the party with that knowledge shall transfer or pay to the party without knowledge of the asset ("the other party"), at the other party's option, one of the following: (1) if the asset is reasonably susceptible to division, a portion of the asset equal to the other party's interest in it; (2) the fair market value of the other party's interest in the asset on the effective date of this Agreement, plus interest at the legal rate from the effective date to the date of payment; or (3) the fair market value of the other party's interest in the asset on the date on which the other party discovers the existence of the asset, plus interest at the legal rate from the discovery date to the date of payment. This provision will not be deemed to impair the availability of any other remedy arising from nondisclosure of community assets.

Omitted Community Debts

24. The parties acknowledge that they have provided in this Agreement for the payment of all community debts of which each is aware. Any debt, claim, or obligation (including the cost of defending against it) not provided for in this Agreement and unknown by the parties at the time of the preparation of this Agreement, will be deemed a joint community obligation as long as the debt, claim, or obligation arose from the conduct of both parties, or from the conduct of one party and the marital community benefitted from that conduct, occurring during the marriage but before the effective date of this Agreement. If, however, an omitted claim, debt, or obligation arose from the conduct of only one party and the community did not benefit from it, then that claim, debt or obligation will be the sole and separate obligation of that party. This provision will not be deemed to impair the availability of any other remedy arising from nondisclosure of community debts.

Reimbursement and Equalizing Payment

25.1. To equalize the division of the parties' community assets and obligations, Husband agrees to pay Wife the \$82,000.00 equalization payment although the equalization payment shown on

Husband PH Wife JN Page 8 of 16

Exhibit 1 is \$80,697.00. Said equalization payment shall be paid from the net proceeds from the sale of the Incline property provided, however, if the Incline property is not sold within one (1) year of the property's listing date, then Husband will pay Wife the sum of \$82,000.00 equalization payment within ninety (90) days after the expiration of said one (1) year period.

Waivers Regarding Future Earnings and Acquisitions

26. The parties agree and acknowledge that all income, earnings, or other property received or acquired by Husband or Wife on or after September 4, 2013, the date of this agreement, is the sole and separate property of the receiving or acquiring party. Each party does forever waive, release, and relinquish all right, title, and interest in all income, earnings, or other property so received or acquired by the other.

Revocation of Trust

27. The parties have previously created the Pierre and Lynda Hascheff Revocable Trust, dated May 17, 2005, naming Husband and Wife as Trustees. The parties now revoke the Pierre and Lynda Hascheff Revocable Trust and agree that the remaining trust property shall be distributed one-half (1/2) to each according to the terms of this Agreement.

Post-Separation Debts

28. The parties agree that every debt incurred by either party after September 4, 2013, shall be the obligation of the party incurring the debt. The parties further agree that the party incurring a debt after that date shall (1) indemnify and hold the other party harmless from the debt, and (2) defend, at his or her own expense, the other party against any claim, action, or proceeding that is brought seeking to hold the other party liable on account of the debt, including the payment of reasonable attorney's fees incurred by the other party in defending against any such alleged liability.

Warranty of Disclosure of Assets and Debts

29. Each party warrants to the other that (1) all community assets and debts of which he or she has any knowledge have been addressed in this Agreement, (2) that he or she is not possessed of or entitled to any community assets of any kind or description that have not been disposed of by this Agreement, and (3) that he or she has not incurred any community debts or obligations other than those disposed of by this Agreement.

Warranty Against Additional Debts

30. Each party warrants to the other that he or she has not incurred, and will not incur, any debt as to which the other is, or may become, liable, other than those debts addressed in this Agreement.

PAYMENT OF TAXES

FA
dk

LH000040

AA 0990

Joint Income Tax Returns

31.1. The parties shall file joint federal income tax return for the calendar year ending December 31, 2012.

31.2. Husband shall be responsible for the preparation of the joint tax return. Wife shall cooperate with Husband in the preparation of the joint tax return by providing all information necessary to prepare the joint return (including but not limited to, W-2 forms from all employers, statements of income from any source other than employment, interest from bank accounts, itemized deductions, and tax credits). This information shall be provided no later than thirty days before the deadline date for filing the return with the Internal Revenue Service.

31.3. Husband shall send the completed returns to Wife for approval and signature at least fifteen days before the deadline date for filing the return with the Internal Revenue Service. If the tax return as prepared are not acceptable to Wife, Wife shall notify Husband of her objections within ten days before the filing deadline.

31.4. Should either party fail to cooperate in the preparation and filing of the joint return, that party shall pay any additional tax liability, late penalties, interest, attorney's or accountants' fees, and any other fees or costs incurred as a result of the failure to cooperate.

31.5. Husband shall pay all expenses incurred in the preparation and filing of the joint return.

31.6. Husband and Wife shall equally pay all amounts owing, if any, in connection with the joint income tax return filed under this Agreement

31.7. If either party fails to comply with the provisions of the paragraphs above, that party shall indemnify the other party for, and hold the other party harmless from, any increased tax liability, late penalties, interest, attorney's fees, accountant's fees, and any other fees or costs incurred by or assessed against the other party as a result of the first party's failure to comply.

Payment of Tax Deficiencies

32.1. Husband and Wife shall be equally responsible for paying all taxes, assessments, liabilities, deficiencies, penalties, interest, and expenses (including, but not limited to, accounting and legal fees) to any federal, state, or local taxing authorities arising out of any review of the parties' personal income tax returns for any period for which the parties filed joint returns.

32.2. Each party shall forward to the other party a copy of any tax deficiency notice or other correspondence or documentation received from any federal, state, or local taxing authority relating to any joint income tax returns. Each party agrees to cooperate fully with the other and to execute any document reasonably requested by the other, and to furnish information and testimony with respect to any tax liability asserted by taxing authorities on any joint return.

32.3 After the Divorce, each party shall be responsible for their own taxes, interest penalties and expenses.

Husband PA Wife JR Page 10 of 16

Allocation of Tax Refund

33. Any tax refund received in connection with any joint income tax return filed by the parties shall be divided equally between the parties.

COSTS AND ATTORNEY FEES

Payment of Attorney Fees and Costs

34. Each party shall be solely responsible for his or her own attorney fees and costs incurred in connection with the negotiation, preparation, and execution of this Agreement and in connection with any proceeding for Dissolution of Marriage that may be commenced by either party. Neither party shall be liable to the other party for any of the other party's attorney fees or costs.

Payment of Future Attorney Fees and Costs to Prevailing Party

35.1. If either party to this Agreement brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

35.2. A party intending to bring an action or proceeding to enforce this Agreement shall not be entitled to recover attorney fees and costs under this provision unless he or she first gives the other party at least 10 written notice before filing the action or proceeding. The written notice shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of the Agreement; (2) the reasons why the moving party believes the subsequent action or proceeding is necessary; (3) whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding; and (4) a period of time within which the other party may avoid the action or proceeding by taking the specified action. The first party shall not be entitled to attorney fees and costs if the other party takes the specified action within the time specified in the notice.

GENERAL PROVISIONS

Representation by Counsel

36.1. Husband has been represented in the negotiation and preparation of this Agreement by his attorney of record Todd L. Torvinen, Esq., Esq. Wife has been represented in the negotiation and preparation of this Agreement by her attorney of record Shawn B. Meador. This Agreement was prepared by Husband's attorney. However, the rule of construction that ambiguities are to be construed in favor of the nondrafting party shall not be employed in the construction of this Agreement.

Execution of Instruments and Further Assurances

37. Husband and Wife shall each execute and deliver promptly on request to the other any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary or proper to carry out their obligations under this Agreement. If either party fails or refuses to comply with the requirements of this paragraph in a timely manner, that party shall reimburse the other party for all expenses, including attorney fees and costs, incurred as a result of that failure, and shall indemnify the other for any loss or liability incurred as a result of the breach. Further, in case of a breach of the duties imposed by this paragraph, the court may, on ex parte application, order the county clerk to execute any document or other paper on behalf of the breaching party.

Release of All Claims

38. Except for the obligations contained in or expressly arising out of this Agreement, each party releases the other from all interspousal obligations, and all claims to the property of the other or otherwise. This release extends to all claims based on rights that have accrued before or during marriage, including, but not limited to, property and support claims and claims sounding in tort except Wife's obligation to defend and indemnify Husband for any malpractice claims.

Waiver of Rights on Death

39. Each party waives all right to inherit in the estate of the other party on his or her death, whether by testamentary disposition or intestacy, except under the terms of a will executed after the effective date of this Agreement. Each party further waives the right to claim a family allowance or probate homestead, or to act as personal representative of the estate of the other unless nominated by another person legally entitled to the right.

Indemnity and Hold Harmless

40. Except for the obligations contained in or expressly arising out of this Agreement, each party warrants to the other that he or she has not incurred, and shall not incur, any liability or obligation for which the other party is, or may be, liable. Except as may be expressly provided in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission of the other, the warranting party shall, at his or her sole expense, defend the other against the claim, action, or proceeding. The warranting party shall also indemnify the other and hold him or her harmless against any loss or liability that he or she may incur as a result of the claim, action, or proceeding, including attorney fees, costs, and expenses incurred in defending or responding to any such action. In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

Agreement Entered Into Voluntarily

Husband PA Wife W Page 12 of 16

LH000043

AA 0993

41. Husband and Wife represent that each, respectively:

- a. Is fully and completely informed as to the facts relating to the subject matter of this Agreement, and as to the rights and obligations of both parties;
- b. Has entered into this Agreement freely and voluntarily, without any coercion, undue influence, duress, or threat from any person;
- c. Has carefully read each provision of this Agreement; and
- d. Fully and completely understands each provision of the Agreement.

Each party acknowledges that this Agreement is fair and equitable to both parties.

Modification and Revocation

42. Except as otherwise provided in this Agreement, the terms of this Agreement may be modified or revoked only by a writing signed by Husband and Wife that expressly refers to this Agreement. The parties understand that this limitation is subject to the power of a court to modify any provisions or orders at any time concerning the custody, visitation, and support of their children.

Effect of Reconciliation

43. If after the effective date of this Agreement, as set forth in Paragraph 44, but before entry of any order or judgment of the court based on it, Husband and Wife acknowledge and agree in writing that their marriage has been restored and that they have mutually rescinded their intent to Dissolution of Marriage, the executory provisions of this Agreement are to remain in force unless revoked or modified.

Effective Date

44. The effective date of this Agreement shall be the date on which it is last executed by either party, as set forth below.

Entire Agreement

45. This Agreement constitutes the entire agreement of Husband and Wife concerning the settlement of their respective rights and obligations arising out of their marriage. It is a full and final settlement of all of those rights and obligations, including spousal support, property rights, liabilities, and other interspousal claims that either may have against the other. This Agreement supersedes any and all other agreements, oral or written, entered into between the parties before the effective date of this Agreement concerning their respective rights and obligations arising out

PPA
lu

LH000044

AA 0994

of their marriage. There are no enforceable representations or warranties other than those set forth in this Agreement.

Parties Bound

46. Except as otherwise expressly provided, this Agreement shall be binding on, and shall inure to the benefit of, the respective beneficiaries, legatees, devisees, heirs, representatives, executors, administrators, assigns, and successors in interest of Husband and Wife.

Effect of Partial Invalidity

If any provision of this Agreement is held by any court to be invalid, void, or unenforceable, that provision shall be deemed to be struck from the Agreement and the remainder of the Agreement shall be unaffected and shall remain in full force and effect.

Waiver of Breach

47. No waiver of any breach of this Agreement or default under it shall be deemed to be a waiver of any subsequent breach or default of the same or similar nature. No waiver of any rights under this Agreement shall be deemed to be a waiver for all time of those rights, but shall be considered only as to the specific events surrounding that waiver.

Paragraph Titles and Interpretation

48. Paragraph titles have been used throughout this Agreement for convenience and reference only. They are not intended to set forth substantive provisions, and shall not be used in any manner whatsoever in the interpretation of the Agreement.

Governing Law

49. This Agreement has been drafted, and shall be executed, entirely within the State of Nevada and shall be governed by and interpreted and enforced under the law of the State of Nevada as that law stands on the effective date of the Agreement. Interpretation shall not be affected by any changes in that law after that date. The parties understand, however, that child custody and child support orders are subject to state and federal laws that determine and limit state court jurisdiction to make and modify these orders, and do not, by this provision, intend to affect the application of those laws.

Advice Regarding Future Property Rights

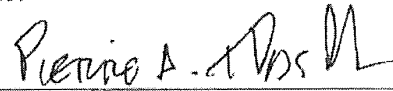
50. The parties acknowledge that they have been advised to review their wills, insurance policies, retirement benefit plans, credit cards and other credit accounts and reports, and other matters that they may want to change in view of their dissolution of marriage. The parties

Husband PA Wife W Page 14 of 16

further acknowledge that they have been advised to review all property rights and employment benefits that have survivorship or inheritance features, such as life insurance policies, pensions, inter vivos trusts, joint tenancies in real and personal property, and bank accounts, to ensure that their present intentions are accurately expressed in the governing instruments.

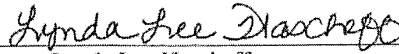
Each undersigned party agrees to the terms and conditions of this Agreement, effective as of the date the last party signs.

DATED this 30 day of Sept, 2013.



Pierre A. Hascheff

DATED this 30th day of SEPT, 2013.



Lynda Lee Hascheff

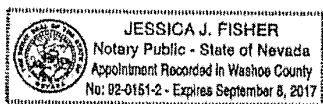
LH000046

AA 0996

ACKNOWLEDGMENTS

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

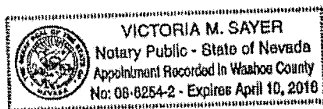
On this 30th day of Sept., 2013, personally appeared before me, a Notary Public, PIERRE A. HASCHEFF, personally known (or proved) to me to be the person whose name is subscribed to the above *Marital Settlement Agreement*, who acknowledged that he executed the *Marital Settlement Agreement*.



Jessica J. Fisher
Notary Public

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 25 day of Sept., 2013, personally appeared before me, a Notary Public, LYNDA LEE HASCHEFF, personally known (or proved) to me to be the person whose name is subscribed to the above *Marital Settlement Agreement*, who acknowledged that she executed the *Marital Settlement Agreement*.



Victoria Sayer
Notary Public

Husband PA Wife LL Page 16 of 16

Section 7: Asset and debt Chart

		COMMUNITY			SEPARATE	
		TOTAL	HUSBAND	WIFE	HUSBAND	WIFE
	ASSETS:					
	CASH:					
1	PAH Chtd Checking US Bank (1596)	6,400	3,200	3,200		
2	PAH Savings US Bank (6551) & (3704)	34,000	17,000	17,000		
3	Riverside LLC US BAnk (office) (3825)	4,000	2,000	2,000		
4	PAH LLC US Bank(Az house) (8156)	4,400	2,200	2,200		
5	PAH Justice Ct US Bank(6859)	434	217	217		
6	Revocable Trust US Bank (7113) & 9696	210,000	105,000	105,000		
7	Revocable Trust US Bank (9274) & 4371	18,000	9,000	9,000		
8	Lynda checking US Bank	3,000	1,500	1,500		
9	Subtotal	280,234	140,117	140,117	0	0
10	INVESTMENTS:					
11	LPL Financial (stock account) 3439	161,773	80,885	80,887		
12	Subtotal	161,773	80,886	80,887	0	0
13	RECEIVABLES & DEPOSITS					
14	Acct Rec. (office)	5,000	2,500	2,500		
15	Subtotal	5,000	2,500	2,500	0	0
16	REAL PROPERTY					
17	Incline Condo	560,000	280,000	280,000		
18	6236 Alpine	360,000	0	360,000		
19	905 Pineridge	120,000	0	120,000		
20	1029 Riverside (less sell exp)	500,000	250,000	250,000		
21	2555 Manzanita	760,000	760,000	0		
22	Arizona	520,000	260,000	260,000		
23	Cancun Timeshare	0	0			
24	Subtotal	2,820,000	1,550,000	1,270,000		0
25	AUTOS & RECREATIONAL VEHICLES. Provide make, model, mileage, and vehicle identification number.					
26	2013 Jeep Cherokee	34,000	34,000			
27	2011 RAV 4	20,000	10,000	10,000		
28	2008 Jeep Liberty	12,000	6,000	6,000		
29	2006 Lexus RX330	18,000		18,000		
30	Subtotal	84,000	50,000	34,000	0	0
31	PERSONAL PROPERTY					
32	Furniture "H" Manzanita	30,000	15,000	15,000		
33	Furniture "W" Alpine	26,000	13,000	13,000		
34	Football & Baseball Tickets	3,000	1,500	1,500		
35	Subtotal	59,000	29,500	29,500	0	0
36	RETIREMENT ACCOUNTS:					
37	ICMA (457 Plan)	11,610	5,805	5,805		
38	PAH Profit Sharing	328,478	164,239	164,239		
39	Lynda IRA	24,720	0	24,720		
40	Pierre IRA	20,114	20,114			
41	1 Yr Group Term Life Insurance (\$250,000) Value 0					
42	Subtotal	384,922	190,158	194,764	0	0
43						
44	TOTAL ASSETS	3,794,929	2,043,161	1,751,768	0	0
45						

Exhibit 1 - Hascheff MSA

Revised 9/3/13

PAH
lu

LH000048

AA 0998

Section 7: Asset and debt Chart

		TOTAL	COMMUNITY		SEPARATE	
			HUSBAND	WIFE	HUSBAND	WIFE
46	DEBT					
47	Mortgages, notes & deeds of trust (Indicate if debt is secured by particular asset above)					
48	Chase (Manzanita)	390,000	390,000	0		
49	Quicken Loan (Alpine)	265,000	0	265,000		
50						
51	Subtotal	655,000	390,000	265,000	0	0
52	Charge Accounts, Credit Cards, medical debts.					
53	Chase Card (W)	6,000	3,000	3,000		
54	AMEX (Bus/Office)	5,000	5,000			
55	Visa	0				
56	Mastercard	0				
57	Sam's Club	3,600	1,800	1,800		
58						
59						
60						
61	Subtotal	14,600	9,800	4,800	0	0
62	TOTAL DEBT (add lines 23 and 26)	668,600	399,800	269,800	0	0
63	NET WORTH (TOTAL ASSETS, line 32 MINUS TOTAL DEBT, line 49)	\$3,126,329	\$1,643,361	\$1,481,968	\$0	\$0
	Equalization		(\$80,697)	\$80,697		
	Equalized		\$1,562,664	\$1,562,665		

PK
llr

EXHIBIT 14

CERTIFICATE OF SERVICE

Pursuant to Rule 25(b) of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this date, I served a true and correct copy of the attached document through the Court's electronic filing system to the following registered users:

Debbie A. Leonard, Esq.
Nevada State Bar No. 8260
Leonard Law, PC
955 S. Virginia Street, Suite 220
Reno, Nevada 89502

*Attorneys for Respondent/
Cross-Appellant*

DATED this 16th day of November, 2023.

/s/ Diana L. Wheelen
An Employee of Fennemore Craig, P.C.