

Page 11: (K) Eric Nelson Personal Expenses

Original Filing: Automobile Purchase (\$47,351.94 on July 8, 2009)

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Automobile Purchase was for the 2008 Truck purchase 7/09. The truck is used for business purposes as most of Eric's job is running around to meetings, etc."

Corrected: We listed the amount of the vehicle in an effort for information purposes, thus we leave the decision to the judge and parties to determine its purpose.

Original Filing: The types of transactions listed in the Eric's expenses include payments for the following: Charitable contributions and Restaurants.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Haven't gone thru each transaction but excluding the truck purchase it's actually \$43,255.95 and still not sure if all those are personal. Not sure why charitable contributions are designated as personal. Some of the restaurants & other areas would be business related as he meets w/ investors, partners, etc"

Corrected: Both parties' reports have listed charitable contributions and restaurants as personal.

Page 15: (N)(a) Aleda Nelson (Eric's Sister)

Original Filing: In the original report, we stated two (2) payments were made to Nelson Auctioneering totaling \$23,600.00. In addition, we explained that Eric produced a copy of a 2009 IRS form 1099 for Aleda Nelson in the amount of \$23,600.00. As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Interest pymnts (*sic*) from outside cooperative broker. You have backup for Hudson Marshall /Williams Williams pymnts (*sic*) Nelson Auctioneering is a corporation so it doesn't matter if you can prove that a 1099 was filed or not... She reported on her taxes. ENA"

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 16: (N)(b) Brock Nelson (Eric's Nephew (Cal's son))

Original Filing: On 6/30/09, Element Iron & Design, LLC received a check for \$6,000.00.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "loan to Element Iron Design-they paid back \$3000 of this on 8/17/09 see GL"

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes. In addition, on Page 6 § C(a) of the initial report, the \$3,000.00 payment is recorded as being received from Brock Nelson.

Page 16: (N)(c) Cal Nelson (Eric's Brother)

Original Filing: In 2009, Clarence Nelson ("Cal") personally, or Cal's Blue Water Marine, a company owned by Cal Nelson, received or benefited from payments totaling \$1,304,368.17.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "you have copies of note – Part of Russell Road transaction"

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes. Information relating to the note is included in the Asset schedules filed by Larry L Bertsch CPA & Associates.

Page 18: (N)(d) Carlene Gutierrez (Eric's Sister)

Original Filing: During 2009 and 2010, Carlene Gutierrez ("Carlene") and/or The Grotta Group, LLC, a company for which Carlene is a member, received payments totaling \$30,000.00. In addition, the two payments made to Carlene on 3/1/10 were booked as Eric Nelson draws and not recorded as a loan receivable from Carlene. Loan documents have not been produced evidencing the terms and conditions of said note.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "pymnts (*sic*) made to Grotta llc and carlene on March 2010 (totaling \$10,000) were just booked against draw by mistake should have been against note....)"

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 18: (N)(e) Chad Ramos (Eric's Nephew (Nola's son))

Original Filing: On March 3, 2009 Chad Ramos ("Chad") received \$3,000 for "ENA COMMISSION TO BE REIMBURSED". According to the records produced, Chad did not receive a 1099 in 2009 from ELN NV for this payment. We have not received employment records or contractor agreements between Chad and ELN NV. Chad Ramos received a 1099 from Eric Nelson Auctioneering ("ENA") for \$25,725.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "ENA commission he WAS 1099'd – He is a Real Estate Agent under ENA under Eric as Broker. ENA is Eric Nelson Auctioneering, Inc 100% owned by ELN NV trust separate entity w/ it's own tax return"

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 19: (N)(f) Eric T. Nelson (Eric's Nephew (Paul's son))

Original Filing: On February 5, 2009, Eric T. Nelson received \$2,000.00 for "Reimbursement for Svcs by Ron Baird". On March 5, 2009, Eric T. Nelson received \$3,000.00 for "Commission ENA". According to the records produced, Eric T. Nelson did not receive a 1099 in 2009 from ELN NV for this payment. We have not received employment records or contractor agreements between Eric T. Nelson and ELN NV. Eric T. Nelson received a 1099 from ENA for \$9,000.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "ENA commission he is also a Real Estate Agent."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 19: (N)(g) Jesse Harber (Eric's Nephew (Nola's son))

Original Filing: On February 24, 2009, On the House, LLC received a \$25,025.00 payment from ELN NV for "Loan". ELN NV Peachtree files indicate that this entity is owned by Jesse Harber. As of May 31, 2011, the balance of the account "due from Jesse Harber" was \$25,025.00. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said note.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "business loan that is going to be written off as bad debt – failed business."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 19: (N)(h) Paul Harber (Eric's Brother-in-law (Nola's husband))

Original Filing: On March 18, 2009, Paul Harber received a payment of \$13,318.83 for "1/2 POND REIMBURSEMENT". The original payment was for \$16,818.83 less \$2,000.00 for "2 MONTHS RENT" and \$1,500.00 for "LESS FOR LIFT". Eric produced a schedule of costs relating to the Cabin Pond in Utah showing a total cost of \$63,402.94. We have not received an agreement relating to the reimbursement of costs for the construction of the pond. Transaction is further detailed in Banone, LLC report.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Pond construction reimbursement...you have the backup but apparently it's not good enough for you. Paul provided the services w/ his crew and paid for materials, etc ... we paid back our portion as the pond was on a portion of Nelson land and Harber land. I'm not sure what else you need. This is reimbursement for costs."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 19: (N)(g) Jesse Harber (Eric's Nephew (Nola's son))

Original Filing: On February 24, 2009, On the House, LLC received a \$25,025.00 payment from ELN NV for "Loan". ELN NV Peachtree files indicate that this entity is owned by Jesse Harber. As of May 31, 2011, the balance of the account "due from Jesse Harber" was \$25,025.00. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said note.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "business loan that is going to be written off as bad debt – failed business."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 19: (N)(h) Paul Harber (Eric's Brother-in-law (Nola's husband))

Original Filing: On March 18, 2009, Paul Harber received a payment of \$13,318.83 for "1/2 POND REIMBURSEMENT". The original payment was for \$16,818.83 less \$2,000.00 for "2 MONTHS RENT" and \$1,500.00 for "LESS FOR LIFT". Eric produced a schedule of costs relating to the Cabin Pond in Utah showing a total cost of \$63,402.94. We have not received an agreement relating to the reimbursement of costs for the construction of the pond. Transaction is further detailed in Banone, LLC report.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Pond construction reimbursement...you have the backup but apparently it's not good enough for you. Paul provided the services w/ his crew and paid for materials, etc ... we paid back our portion as the pond was on a portion of Nelson land and Harber land. I'm not sure what else you need. This is reimbursement for costs."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 20: (N)(i) Paul Nelson (Eric's Brother)

Original Filing: In 2009, Paul Nelson ("Paul") received payments totaling \$19,975.00. According to the Peachtree files produced, Paul repaid \$10,000.00 on July 28, 2009 which was booked as "loan payment to Eric's personal acct". This transaction does not appear in the ELN NV bank accounts and is booked as Eric Nelson Draws. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said note.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "\$10,000 of this was paid back on 7/28/2009."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 20: (N)(j) Ryan Nelson (Eric's Nephew (Paul's son))

Original Filing: On March 5, 2009, Ryan Nelson ("Ryan") received \$3,000.00 for "COMMISSION ENA". According to the records produced, Ryan did not receive a 1099 in 2009 from ELN NV for this payment. We have not received employment records or contractor agreements between Ryan Nelson and ELN NV. Ryan received a 1099 from ENA for \$9,000.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Again, he was a Real Estate Agent AND YES he did get 1099'd from ENA."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 29: (U)(c) Keith Little

Original Filing: On February 18, 2009, Keith Little ("Little") received a payment of \$3,000.00 for "Commission-ENA". According to the records produced, Little did not receive a 1099 in 2009 from ELN NV for this payment. We have not received employment records or contractor agreements between Keith Little and ELN NV. Keith Little received a 1099 from ENA for \$38,500.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "He was an employee of ENA – YES –He was 1099'd through ENA – Real Estate Agent."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 29: (U)(d) Lana Martin

Original Filing: During 2010, Lana Martin, an employee of Eric Nelson Auctioneering, Inc., received \$5,030.00. As of January 1, 2009, ELN NV Peachtree records indicate a Note Payable to "L. Martin" of \$374,997.29. As of May 31, 2011, the note has a balance of \$363,997.29. As of the date of this report, loan documents have not been produced evidencing the terms and conditions of said loan.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "You did notice she is owed nearly \$400,000 from Dynasty on the books as she loaned that money in regard to the Silver Slipper & MS Land. Those were loan pymnts (*sic*)."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 29: (U)(e) Lisa Klein

Original Filing: On February 18, 2009, Lisa Klein ("Klein") received a payment of \$3,000.00 for "Commission-ENA". On March 6, 2009, Klein received a payment of \$1,500.00 for "Computer Reimbursement-ENA". According to the records produced, Klein did not receive a 1099 in 2009 from ELN NV for this payment. We have not received employment records or contractor agreements between Klein and ELN NV. Lisa Klein received a 1099 from ENA for \$37,500.00. As the transaction is booked as due from ENA, the 1099 for ENA may include this payment.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Again – she worked for ENA as a Real Estate Agent& YES she did receive a 1099 from ENA."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 31: (V)(a) Soris Enterprises

Original Filing: In 2009, ELN NV payments to Soris Enterprises totaling \$146,700.00. Eric explained that the payments stopped in September 2009 as Frank Soris ("Soris") began to collect his own rents. Prior to September 2009, ELN NV collected rents on Frank Soris' real estate and in turn paid the collections to Soris. The real estate located in Phoenix was transferred to Soris in February of 2010 as collateral on a loan originating in January of 2002 involving property in Wyoming. According to the records produced, Soris did not receive a 1099 in 2009 from ELN NV for these payments.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "those pymnts (sic) were part of the 1031 exchange to us & he didn't require a 1099 as the company is a corporation."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 31: (V)(b) The Larsen Company

Original Filing: On January 5, 2009, ELN NV paid The Larsen Company \$4,000.00 for "Partial payment –Sorís". Eric produced a copy of a 2009 IRS form 1099 for The Larsen Company in the amount of \$4,000.00. As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "This is Sorís' Agent and was commission related to the Sorís and YES he was 1099'd."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 32: (V)(c) Wyoming Racing, LLC

Original Filing: On October 27, 2009, ELN NV paid Wyoming Racing, LLC \$1,375.22 for "Reimbursement for property taxes". According to the records produced, Wyoming Racing, LLC did not receive a 1099 in 2009 from ELN NV for this payment.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "This was the party that bought the Wyoming Downs track from Wyoming Horseracing, Inc. back in 2006 for reimbursement taxes that were owed from us that they paid...hence no 1099 because it was for reimbursement."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

The initial report as well as these adjustments comes from the Peachtree Files obtained from Eric Nelson. Bank accounts not tracked in Peachtree files for ELN NV may not be reflected accurately within this report. As a result, we reserve the right to issue a supplemental Source and Application of funds for any bank account not tracked in the Peachtree Files provided by Eric Nelson.

1 **NOTC**

Larry L. Bertsch, CPA, CFF

2 Nicholas S. Miller, CFE

LARRY L. BERTSCH, CPA & ASSOCIATES

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5 *Forensic Accountants*

6
7 **DISTRICT COURT**
8 **FAMILY DIVISION**
CLARK COUNTY, NEVADA

9 ERIC L. NELSON,

10 Plaintiff,

11 v.

12 LYNITA SUE NELSON,

13 Defendant.

Case No. D-09-411537-D

Dept. O

**NOTICE OF FILING AMENDMENT TO
SOURCE AND APPLICATION OF FUNDS
FOR LYNITA NELSON**

14
15 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
16 L. BERTSCH, CPA & ASSOCIATES, file the Amendment to Source and Application of Funds for
17 Lynita Nelson, a copy of which is attached as **Exhibit "1."**

18 DATED this 27 day of February, 2012.

19 **LARRY L. BERTSCH CPA & ASSOCIATES**

20 

21 Larry L. Bertsch, CPA, CFF

22 Nicholas S. Miller, CFE

23 265 East Warm Springs Rd., Suite 104

Las Vegas, Nevada 89119

Forensic Accountants

CERTIFICATE OF SERVICE

I certify that on the 27 day of February, 2012, I mailed a copy of the foregoing **NOTICE OF FILING AMENDMENT TO SOURCE AND APPLICATION OF FUNDS FOR ERIC L. NELSON NEVADA TRUST** to the following at their last known address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

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An employee of Larry L. Bertsch, CPA & Associates

EXHIBIT 1

Amendment to
Source and Application of Funds
For
Lynita Nelson

From January 1, 2009 through June 30, 2011

District Court Family Division

Clark County, Nevada

Case Number: D-09-411537-D

Department O

Original Report filed on December 8, 2011

Amended Report Date: February 27, 2012

Prepared by:

Larry L. Bertsch, CPA, CFF

&

Nicholas Miller, CFE, CSAR, MBA

On September 28, 2011, Larry L. Bertsch and Nicholas Miller, filed a *Notice Of Filing Income and Expenses Reports for Lynita Nelson* in District Court, Clark County, Nevada Case No. D-09-411537-D Dept. O. Pursuant to the filing, we received subsequent information relating to adjustments needing to be made to the initial filing. We submit the following report to serve as an amendment to the September 28, 2011 filing:

A copy of the updated Source and Application of funds for the period of January 1, 2009 through June 30, 2011 is attached as **EXHIBIT A** to this amendment.

Unknown Deposits and Cash Withdrawals:

Original Filing: The initial report indicated unknown deposits of \$576,210.56 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper, Michelle Blank, provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, in 2010, Lynita deposited \$350,000.00 in checks that were previously listed in the initial report as "Cash Withdrawal". In January 2011, Lynita withdrew \$5,000.00 in cash and subsequently deposited the money into a different bank account in February.

Corrected: As a result of the production of the QuickBooks file, \$355,000.00 in Unknown Deposits is removed. The deposits were as a result of previously recorded Cash Withdrawals and Unknown Checks.

Children Payments:

Original Filing: The initial report indicated payments to or for the benefit of Eric and Lynita's children of \$24,193.46 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper, Michelle Blank, provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, \$11,920.49 of expenses previously reported as Lynita's personal expenses, should have been recorded as Children Expenses.

Corrected: As a result of the production of the QuickBooks file, \$11,920.49 is added to the various Children's payments and/or expenses.

Garett's expenses increased as a result of reclassification of multiple expenses for clothing.

General Children items increased as a result of payments for multiple children's expenses such as clothing and school expenses.

Community Taxes:

Original Filing: The initial report recorded \$2,939.56 in payments to Mohave County as housing expenses.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper, Michelle Blank, provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, \$2,939.56 in payments to Mohave County was initially reported as Personal Housing expenses. However, these taxes were for the land located in Mohave County Arizona which are owned through Lynita's Trust.

Corrected: As a result of the production of the QuickBooks file, \$2,939.56 is reported as payments to Community Assets.

Housing Expenses:

Original Filing: The initial report indicated Housing Expenses of \$190,539.72 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper, Michelle Blank, provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, many of the initial expenses reported as Improvements were classified incorrectly. In addition, several "unknown checks" were reclassified as Lawn Service, Maintenance, Other and Pool Expenses. The total amount of changes resulted in an additional \$1,143.87 in housing expenses.

Corrected: As a result of the production of the QuickBooks file, Lynita's Housing Expenses have been adjusted to reflect \$191,683.59 in Housing related payments between January 1, 2009 and June 30, 2011. As previously explained \$2,529.14 was removed from Housing Expenses and reported as Community Taxes. In addition, \$21,545.29 in Housing Expenses had been initially reported as Improvements, however, this amount was for maintenance on the house and not towards improvements.

Medical Expenses:

Original Filing: The initial report indicated Medical Expenses of \$39,562.73 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper, Michelle Blank, provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, \$385.40 in expenses should have been classified as Children's expenses.

Corrected: As a result of the production of the QuickBooks file, \$385.40 in Medical Expenses should have been classified as Children's expenses.

Payments to Individuals:

Original Filing: The initial report indicated payments to various individuals between January 1, 2009 and June 30, 2011 totaling \$12,327.00.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper, Michelle Blank, provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, payments to the following individuals should be reclassified as payments to: professionals, housing expenses, and/or personal expenses.

Corrected: As a result of the production of the QuickBooks file, payments to the following individuals have been reclassified:

Bob Gaston – Mr. Gaston was a mediator in the case, thus \$2,100.00 has been reclassified as payments to professionals.

Camilla Wells – Ms. Wells has been reclassified as personal expenses.

Jose Lainer – Mr. Lainer is a housekeeper, thus, \$410.00 has been reclassified as Other Housing Expenses.

Margaret Johanson – Ms. Johanson is a counselor, thus \$5,120.00 has been reclassified as Professionals.

Patricia Lane – Ms. Lane is a housekeeper, thus, \$155.00 has been reclassified as Other Housing Expenses.

Personal Expenses:

Original Filing: The initial report indicated Personal Expenses of \$411,597.42 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, \$3,411.44 in personal expenses was misclassified in the initial report.

Corrected: As a result of the production of the QuickBooks file, \$3,411.44 has been reclassified. Reclassifications include children's expenses for clothing and housing expenses.

Professionals:

Original Filing: The initial report indicated payments to Professionals totaling \$598,623.75 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, \$15,631.00 was misclassified.

Corrected: As a result of the production of the QuickBooks file, \$15,631.00 has been reclassified. Reclassifications include payments initially recorded as payments to individuals and unknown checks.

Professionals:

Original Filing: The initial report indicated unknown checks totaling \$43,744.51 from January 1, 2009 through June 30, 2011.

Lynita's Response: On December 14, 2011, Lynita's bookkeeper provided a copy of the QuickBooks file as of December 14, 2011. According to the QuickBooks file and statements by Lynita, we were able to identify \$19,101.30 in previously unknown checks.

Corrected: As a result of the production of the QuickBooks file, \$19,101.30 has been reclassified. Reclassifications include payments to personal expenses, professionals and housing expenses.

	Original	Adjusted	Difference
Income			
Dividend Income	282.20	282.20	-
Sale of Investment	1,443,604.65	1,443,604.65	-
Unknown Deposit	576,210.56	221,210.56	(355,000.00)
Total Income	<u>2,020,097.41</u>	<u>1,665,097.41</u>	<u>(355,000.00)</u>
Expense			
Bank of America	3,922.93	3,922.93	-
Bank Service Charge	1,808.99	1,808.99	-
Cash Withdrawal	581,838.66	226,838.66	(355,000.00)
Children Payments			
Aubrey Nelson	328.36	328.36	-
Carli Nelson	18,798.00	18,989.72	191.72
Erica Nelson	620.00	714.97	94.97
Garett Nelson	1,346.10	3,808.62	2,462.52
General Items	3,101.00	12,272.28	9,171.28
Total Children Payments	<u>24,193.46</u>	<u>36,113.95</u>	<u>11,920.49</u>
Community Assets			
Taxes		2,939.56	2,939.56
FIA Card Services	4,778.69	4,778.69	-
Housing Expenses			
Alarm	1,062.70	1,062.70	-
Improvements	68,550.97	48,748.24	(19,802.73)
Lawn Service	40,054.22	41,419.67	1,365.45
Maintenance	-	21,545.29	21,545.29
Other	10,432.67	10,877.67	445.00
Pest Control	1,280.00	1,280.00	-
Pool	7,826.36	7,946.36	120.00
Taxes	21,978.70	19,449.56	(2,529.14)
Utilities	39,354.10	39,354.10	-
Total Housing Expenses	<u>190,539.72</u>	<u>191,683.59</u>	<u>1,143.87</u>
Interest Expense	1,921.13	1,921.13	-
Medical	39,562.73	39,177.33	(385.40)

EXHIBIT A

Payments to Individuals:

Allen Weiss	3,910.00	3,910.00	-
Bob Gaston	2,100.00		(2,100.00)
Camilla Wells	632.00		(632.00)
Jose Lainer	410.00		(410.00)
Margaret Johanson	5,120.00		(5,120.00)
Patricia Lane	155.00		(155.00)
Total Payments to Individuals	<u>12,327.00</u>	<u>3,910.00</u>	<u>(8,417.00)</u>

Personal Expenses

Automotive	65,113.01		
Cell Phone	1,983.99		
Clothing	59,386.89		
Donations	14,961.81		
Food	34,367.36		
Hair, Nails, Other	27,394.26		
Horse Exp	21,989.11		
Insurance	19,428.07		
Other	131,741.57		
Restaurants	16,141.49		
Telecommunications	19,089.86		
Total Personal Expenses	<u>411,597.42</u>	<u>408,185.98</u>	<u>(3,411.44)</u>

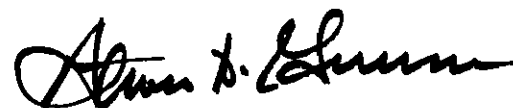
Professionals

Anthem Forensics	68,337.00	69,363.00	1,026.00
Boyce and Gianni LLP	1,800.00	2,000.00	200.00
Bradshaw Smith & Co	3,205.00	3,205.00	-
DeBecker Investigations, Inc.	2,250.00	2,250.00	-
Dukes Dukes Keating	18,897.13	18,897.13	-
Jeffrey Burr & Associates	948.00	948.00	-
Ladner Appraisal Group	2,600.00	2,600.00	-
Margaret Johanson (Counselor)	-	5,340.00	5,340.00
Melissa Attanasio	70,927.50	75,392.50	4,465.00
Reed Van Boerum	14,040.00	14,040.00	-
Robert Gaston		4,600.00	4,600.00
Rogers & Haldeman	2,725.00	2,725.00	-
The Dickerson Law Group	412,894.12	412,894.12	-
Total Professionals	<u>598,623.75</u>	<u>614,254.75</u>	<u>15,631.00</u>

Unknown Check	43,744.51	24,643.21	(19,101.30)
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WFNNB	231.64	-	(231.64)
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Total Expense	<u>1,915,090.63</u>	<u>1,560,178.77</u>	<u>(354,911.86)</u>
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CLERK OF THE COURT

1 **MAFC**
2 **MARK A. SOLOMON, ESQ.**
3 Nevada State Bar No. 0418
4 E-mail: msolomon@sdfnvlaw.com
5 **JEFFREY P. LUSZECK**
6 Nevada State Bar No. 9619
7 E-mail: jluszeck@sdfnvlaw.com
8 **SOLOMON DWIGGINS & FREER, LTD.**
9 Cheyenne West Professional Centre
10 9060 W. Cheyenne Avenue
11 Las Vegas, Nevada 89129
12 Telephone No.: (702) 853-5483
13 Facsimile No.: (702) 853-5485
14 *Attorneys for LANA MARTIN, Distribution*
15 *Trustee of the ERIC L. NELSON*
16 *NEVADA TRUST dated May 30, 2001*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **ERIC L. NELSON,**

13 **Plaintiff/Counterdefendant,**

14 **vs.**

15 **LYNITA SUE NELSON, LANA MARTIN, as**
16 **Distribution Trustee of the ERIC L. NELSON**
17 **NEVADA TRUST dated May 30, 2001**

18 **Defendants/Counterclaimants.**

) Case No. D-411537

) Dept. No. O

) **HEARING DATE:** 04/10/2012

) **HEARING TIME:** ~~9:00 a.m.~~ 1:30 P.M.

19 **LANA MARTIN, Distribution Trustee of the**
20 **ERIC L. NELSON NEVADA TRUST dated**
21 **May 30, 2001,**

22 **Crossclaimant,**

23 **vs.**

24 **LYNITA SUE NELSON,**

25 **Crossdefendant.**

26 **MOTION FOR PAYMENT OF ATTORNEYS' FEES AND COSTS**

27 Lana Martin, Distribution Trustee ("Trustee") of the ERIC L. NELSON NEVADA TRUST
28 dated May 30, 2001 ("ELN Trust"), by and through her counsel, Solomon Dwiggins & Freer, Ltd.,

1 hereby move this Court for payment of attorneys' fees and costs incurred in the instant matter.

2 This Motion is based on the Memorandum of Points and Authorities which follows and on
3 all documents and papers filed herein.

4 DATED this 6th day of March, 2012.

5 SOLOMON DWIGGINS & FREER, LTD.

6
7 By: 

MARK A. SOLOMON, ESQ.
Nevada State Bar No. 0418
JEFFREY P. LUSZECK
Nevada State Bar No. 9619
Cheyenne West Professional Centre'
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

12 **NOTICE OF HEARING**

13 **TO:** Robert P. Dickerson, Esq., Counsel for Lynita S. Nelson.

14 **TO:** Rhonda K. Forsberg, Esq., Counsel for Eric L. Nelson

15 **PLEASE TAKE NOTICE** that the undersigned will bring the above **MOTION FOR**

16 **PAYMENT OF ATTORNEYS' FEES AND COSTS** on for hearing before the above entitled Court

17 on the 10th April 1:30 p.m.
18 on the day of March, 2012, at the hour of 9:00 a.m., or as soon thereafter as counsel can be
heard.

19 DATED this 6th day of March, 2012.

21 SOLOMON DWIGGINS & FREER, LTD.

22
23 By: 

MARK A. SOLOMON, ESQ.
Nevada Bar No. 0418
JEFFREY P. LUSZECK, ESQ.
Nevada Bar No. 9619
Cheyenne West Professional Centre'
9060 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On December 13, 2011, this Court enjoined the ELN Trust from using the proceeds “from the
3 sale of Dynasty Development Group LLC’s interest in the Silver Slipper Casino Venture LLC without
4 an Order from this Court.”¹ Notwithstanding, this Court recognized the Trustees’ inherent ability and
5 duty to use assets of the ELN Trust to defend against any lawsuits, including this divorce action by
6 holding:

7 THE COURT FURTHER FINDS that Lana Martin, as Trustee of the
8 ELN Trust, must, in accordance with its Articles and its fiduciary
9 duties under NRS 163.380,² be able to use any funds or assets
10 necessary to defend against any lawsuits, including this divorce
11 action.

12 IT IS FURTHER ORDERED that Lana Martin, Trustee of the ELN
13 Trust, is free to seek leave of this Court to obtain any funds or assets
14 necessary to defend against any lawsuits, including this divorce
15 action, that will have a direct effect on the value of any properties that
16 are contained in the ELN Trust and, as such, are such susceptible to
17 a community interest claim.³

18 This Court’s holding is consistent with Article XII, Section 12.1(m) and (z) of the ELN Trust,
19 which specifically allow the Trustee:

- 20 (m) To employ agents, attorneys, brokers, and other employees,
21 individual or corporate, and to pay them reasonable
22 compensation, which shall be deemed part of the expenses of
23 the Trusts and powers hereunder.
24 (z) To employ and compensate, out of the principal or income or
25 both, as the Trustee shall determine, such agents, persons,
26 corporations or associations, including, accountants, brokers,
27 attorneys . . . deemed needful by the Trustees even if they are
28 associated with a Trustee, for the proper settlement,
investment and overall financial planning and administration

21 1 See Finding of Fact and Order dated January 31, 2012, attached hereto as **Exhibit 1**.

22 2 NRS 163.380 provides that a person acting in his role as a fiduciary may utilize any
23 income created by the Trust to pay professionals necessary to assist in the administration of the
24 Trust, including attorneys.

25 3 This sentiment was confirmed by Judge Sullivan on at least 2 separate occasions at
26 the December 23, 2011, hearing. See Hearing at 14:09:04 (Judge Sullivan: “If you need money to
27 defend the Trust I’ll be glad to listen to that as far as money you need, so you have a duty and an
28 obligation to protect the Trust I agree with that so, if you need money for litigations costs, I’ll
entertain that.”); and 14:19:12 (Judge Sullivan: “Again, I’ll entertain a motion for attorneys’ fees on
that.”).

of the trusts . . .”⁴

Further, Article XII, Section 12.6 of the ELN Trust authorizes the Trustee to “employ attorneys, accountants, investment managers, specialists, and such other agents as the Trustee shall deem necessary or desirable.”

The ELN Trust currently owes Solomon Dwiggins & Freer, Ltd. \$68,682.89,⁵ and Solomon Dwiggins & Freer, Ltd. requests an additional \$60,000.00 to be held as a retainer to offset attorneys’ fees and costs incurred in preparing for the July 2012, evidentiary hearing. Further, the ELN Trust currently owes Gerety & Associates, CPA, the ELN Trust’s expert witness \$34,901.05,⁶ and Gerety & Associates, CPA requests an additional \$25,000.00 to be held as a retainer to offset fees associated with the preparation of an expert witness report on behalf of the ELN Trust. The Rushforth Firm, the ELN Trust’s other expert witness in this matter, requests \$20,000.00 to be held as a retainer to offset fees associated with the preparation of an expert witness report on behalf of the ELN Trust. Said fees and costs and expert witness fees are reasonable and necessary to defend the integrity of the ELN Trust.

In light of the foregoing, the Trustee respectfully requests this Court to allow the payment of \$128,682.89 (\$68,682.89 for attorneys’ fees and costs due and owing and \$60,000 to be held as a retainer) to the law firm of Solomon Dwiggins & Freer, Ltd., \$59,901.05 (\$34,901.05 for fees due and owing and \$25,000 to be held as a retainer) to Gerety & Associates, CPA and \$20,000.00 to The

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⁴ See selection portions of the ELN Trust, attached hereto as **Exhibit 2**.

⁵ See Solomon Dwiggins & Freer, Ltd.’s bills, attached hereto as **Exhibit 3**.

⁶ See Gerety & Associates’ bills, attached hereto as **Exhibit 4**.

1 Rushforth Firm from the \$1,568,000.00 million that this Court previously enjoined the ELN Trust
2 from using pending further Court order.

3 DATED this 6th day of March, 2012.

5 **SOLOMON DWIGGINS & FREER, LTD.**

6 By: 

7 MARK A. SOLOMON, ESQ., NSB #0418
8 JEFFREY P. LUSZECK, ESQ., NSB # 9619
9 Cheyenne West Professional Centre
10 9060 West Cheyenne Avenue
11 Las Vegas, Nevada 89129
12 *Attorneys for LANA MARTIN, Distribution*
13 *Trustee of the ERIC L. NELSON*
14 *NEVADA TRUST dated May 30, 2001*
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON
Plaintiff/Petitioner

-VS-

LYNITA SUE NELSON
Defendant/Respondent

CASE NO. D-411537

DEPT. 0

**FAMILY COURT MOTION/OPPOSITION
FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/~~Opposition~~: ☒ Plaintiff/Petitioner ☐ Defendant/Respondent

MOTION FOR/~~OPPOSITION~~ TO Payment of Attorney Fees & Costs

Notice

**Motions and Oppositions to
Motions filed after entry of
final Decree or Judgment
(pursuant to NRS 125,
125B & 125C)
are subject to the Re-open
Filing Fee of \$25.00, unless
specifically excluded.
(See NRS 19.0312)**

Excluded Motions/Oppositions

- ☒ Motions filed before final Divorce/Custody Decree entered
(Divorce/Custody Decree NOT final)
- ☐ Child Support Modification ONLY
- ☐ Motion/Opposition For Reconsideration (Within 10 days of Decree)
Date of Last Order _____
- ☐ Request for New Trial (Within 10 days of Decree)
Date of Last Order _____
- ☐ Other Excluded Motion _____
(Must be prepared to defend exclusion to Judge)

NOTE: If no boxes are checked, filing fee **MUST** be paid.

☐ Motion/Opp IS subject to \$25.00 filing fee ☒ Motion/Opp IS NOT subject to filing fee

Date: March 6, 2012

Jeffrey P. Luszek, Esq.
Printed Name of Preparer

[Signature]
Signature of Preparer

EXHIBIT 1

EXHIBIT 1

NEO

FILED

JAN 31 12 09 PM '12

DISTRICT COURT
CLARK COUNTY, NEVADA

[Signature]
CLERK OF COURT

ERIC L. NELSON,
Plaintiff,

CASE NO.: D-09-411537-D
DEPT. NO.: O

vs.

LYNITA NELSON,
Defendant,

NOTICE OF ENTRY OF ORDER

TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered
in the above-referenced case on the 31st day of January, 2012.

DATED this 31st day of January, 2012.

[Signature]
Lori Parr
Judicial Executive Assistant
Dept. O

1
2 ORDER

FILED

JAN 31 12 09 PM '12

3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

Alvin L. Sullivan
CLERK OF DISTRICT COURT

7
8 ERIC L. NELSON,
9 Plaintiff,

CASE NO.: D-09-411537-D
DEPT. NO.: O

10 vs.

11 LYNITA NELSON,
12 Defendant,

13 FINDINGS OF FACT
14 AND ORDER

15
16 This Matter having come before this Honorable Court on December 13, 2011, on
17 Counterdefendant/Crossdefendant/Third-Party Defendant Lana Martin, Distribution Trustee of
18 the Eric L. Nelson Nevada Trust's Motion to Dissolve Injunction, Defendant Lynita Nelson's
19 Opposition to Motion to Dissolve Injunction and Countermotion for an Award of Attorney's
20 Fees and Costs and Lana Martin's Reply to Opposition to Motion to Dissolve Injunction and
21 Opposition to Countermotion for an Award of Attorney's Fees and Costs, with Plaintiff, Eric
22 Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson,
23 appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq. and Josef
24 Karacsonyi, Esq., and Defendant Lana Martin, appearing and being represented by Mark A.
25 Solomon, Esq. and Jeffrey P. Luszeck, Esq., with the Court having reviewed
26 Counterdefendant/Crossdefendant/Third-Party Defendant's Motion, Defendant's Opposition
27
28

FRANK R. SULLIVAN
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O
LAS VEGAS NV 89101

1
2 and Countermotion and Counterdefendant/Crossdefendant/Third-Party Defendant's Reply and
3 Opposition to Countermotion, having heard oral argument and being duly advised in the
4 premises, good cause being shown:

5 THE COURT HEREBY FINDS that on May 18, 2009, pursuant to Eighth Judicial
6 District Court Rule 5.85, this Court issued a Joint Preliminary Injunction (hereinafter "JPI")
7 against Mr. Nelson and Ms. Nelson respectively.

8 THE COURT FURTHER FINDS that at the hearing held on April 4, 2011, Ms. Nelson
9 made a request that the Court order that any proceeds Mr. Nelson received from his interest in
10 Dynasty Development Group, LLC (hereinafter "Dynasty") or the Silver Slipper Casino
11 (hereinafter "Silver Slipper") be placed in an interest-bearing trust account to be held by his
12 attorney, David Stephens, Esq.

13 THE COURT FURTHER FINDS that at the April 4, 2011 hearing, neither Mr. Nelson,
14 nor his counsel, objected to the Court placing the "Dynasty Development" and/or "Silver
15 Slipper" proceeds in an interest-bearing trust account.

16 THE COURT FURTHER FINDS that on June 9, 2011, the Court entered its Order from
17 the April 4, 2011 and such Order contained the following language:

18 IT IS FURTHER ORDERED that any monies received by Plaintiff, ERIC L. NELSON
19 or any entity owned or controlled by Mr. Nelson, related to his ownership interest in the
20 Silver Slipper Casino/Dynasty Development Group, LLC, shall immediately be turned
21 over to his counsel, David Stephens, Esq., to be placed into and held by Mr. Stephens'
22 (sic) in an interest bearing attorney trust account.

23 THE COURT FURTHER FINDS that on August 9, 2011, Mr. and Ms. Nelson
24 stipulated to joining the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust") and the LSN
25 Nevada Trust (hereinafter "LSN Trust") as necessary parties to this divorce action.
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2 THE COURT FURTHER FINDS that the ELN Trust desires to obtain One Million Five
3 Hundred Sixty-Eight Thousand Dollars (\$1,568,000) from a transaction involving the Silver
4 Slipper to purchase the Wyoming Downs racetrack.

5 THE COURT FURTHER FINDS that from the financial records submitted thus far by
6 Mr. Larry Bertsch, the Court-appointed forensic accountant, the ELN Trust has a One Hundred
7 Percent (100%) ownership interest in Dynasty, and Dynasty currently has a Thirty-Four Percent
8 (34%) interest in the Silver Slipper Casino.

9
10 THE COURT FURTHER FINDS that Lana Martin, as Distribution Trustee of the Eric
11 L. Nelson Nevada Trust, argues in her Motion that the June 9, 2011 injunction should be
12 dissolved on the following grounds: that the injunction directly affects the interest of Dynasty,
13 an asset wholly owned by the ELN Trust; that the ELN Trust, or more specifically, Lana
14 Martin, was not a party to the action, and as a result thereof, Ms. Nelson failed to provide
15 adequate notice to the ELN Trust; that Ms. Nelson failed to show the requisite elements for
16 injunctive relief; and that the injunction is void on its face because the Court failed to address
17 the duration of the injunction and failed to state its reasons for its issuance.

18
19 THE COURT FURTHER FINDS that Ms. Nelson argues in her Opposition that she
20 does not have to meet the requisite elements for injunctive relief as the Court has complete
21 discretion to order injunctive relief in a divorce action, and that the Court is required to make
22 any and all orders necessary to preserve any property pending the Court's ultimate
23 determination as to the property's classification as community or separate.

24
25 THE COURT FURTHER FINDS that NRS 33.010 (2) provides that an injunction may
26 be granted when it is evident that the actions of one party will cause irreparable harm to the
27 other party.

28

1
2 THE COURT FURTHER FINDS that NRCP 65 (d) provides that all orders that grant
3 an injunction must specifically address the acts that must be stopped and is binding only upon
4 the parties to the action.

5 THE COURT FURTHER FINDS that in order for a moving party to obtain preliminary
6 injunctive relief, the moving party must establish that there is a likelihood of success on the
7 merits and that if the non-moving party continued its current course of conduct, the moving
8 party would suffer irreparable harm of which there would be no remedy at law that could
9 adequately redress such harm. *Dept. of Conservation and Natural Resources, Div. of Water*
10 *Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (Nev. 2005).

12 THE COURT FURTHER FINDS that a Court has complete discretion to issue a
13 preliminary injunction, but in the event it issues the injunction, the Court must address the
14 irreparable harm in specific terms to warrant its use of this extraordinary remedy. *Danberg*
15 *Holdings Nevada, LLC v. Douglas County and its Bd. of County Com'rs*, 115 Nev. 129, 143-
16 44, 978 P.2d 311, 319-20 (Nev. 1999).

18 THE COURT FURTHER FINDS that at the time it ordered the preliminary injunction
19 with respect to any monies received by Mr. Nelson related to his ownership interest in Dynasty
20 and the Silver Slipper, the ELN Trust and/or its Distribution Trustee, Lana Martin, were not
21 parties to the action as they did not join until August 9, 2011.

22 THE COURT FURTHER FINDS that while the ELN Trust and/or Lana Martin were
23 not parties to the action at the time that the requested injunctive relief was granted, it is readily
24 apparent that the ELN Trust and Lana Martin were aware of the divorce proceedings and the
25 request for injunctive relief based upon the following: Eric Nelson is a beneficiary of the ELN
26 Trust; Eric Nelson is the Investment Trustee of the ELN Trust; and that six (6) days of
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2 extensive testimony as to the ELN Trust was heard by this Court, commencing on August 31,
3 2010 and concluding on November 22, 2010.

4 THE COURT FURTHER FINDS that while the preliminary injunction issued by this
5 Court impacted the ELN Trust and its ownership interest in Dynasty and the Silver Slipper, the
6 Court did not issue the preliminary injunction pursuant to NRCP 65 (d) as the June 6, 2011
7 Order was simply an extension of the Joint Preliminary Injunction (hereinafter "JPI") that this
8 Court previously issued on May 18, 2009, and, as such, the provisions of NRCP 65 (d) were
9 inapplicable.
10

11 THE COURT FURTHER FINDS that NRCP 65 (f) states: "[t]his rule is not applicable
12 to suits for divorce . . . In such suits, the court may make prohibitive or mandatory orders, with
13 or without notice or bond, as may be just."

14 THE COURT FURTHER FINDS that Eighth Judicial District Court Rule (hereinafter,
15 EDCR) 5.20, Preliminary Injunctions and Temporary Restraining Orders, specifically provides
16 that the requirements enumerated in EDCR 2.10, which requires that the moving party must file
17 a Motion and that a hearing must be held on such Motion, do not apply to the Court's issuance
18 of a JPI.
19

20 THE COURT FURTHER FINDS that EDCR 5.85 provides that the Clerk may issue a
21 JPI that enjoins both parties to the action from taking any action that disposes of community
22 property or *any property which is the subject of a claim of community interest*, except in the
23 usual course of business or for the necessities of life, without the written consent of the parties
24 or the permission of the court.
25

26 THE COURT FURTHER FINDS that while the ELN Trust argues that EDCR 5.85 is
27 inapplicable in the instant matter because a JPI is designed to prevent only the divorcing parties
28

1
2 from taking any of the prohibited actions, the ELN Trust and the assets contained therein are
3 subject to a community interest claim by Ms. Nelson which the Court has yet to rule upon.

4 THE COURT FURTHER FINDS that NRS 125.050 states that the Court is obligated to
5 make any orders that are necessary to preserve the status quo of the property and any other
6 pecuniary interests to ensure that each party receives his and her equitable share of the marital
7 estate.

8 THE COURT FURTHER FINDS that the aforementioned Rules (i.e., NRCP 65 (f),
9 EDCR 5.20, and EDCR 5.85), in conjunction with NRS 125.050, promote a policy of
10 empowering this Court to use injunctive relief to preserve the status quo of the marital estate
11 and to ensure that the value of the marital estate will not be decreased unilaterally as both
12 parties are entitled to an equitable share of the marital estate.

13 THE COURT FURTHER FINDS that in issuing the injunctive relief, even if the Court
14 was to apply the likelihood of success on the merits principle as enunciated in *Dept. of*
15 *Conservation and Natural Resources*, and the irreparable harm provision of NRS 33.010, Ms.
16 Nelson would still prevail.

17 THE COURT FURTHER FINDS that it has presided over six (6) days of trial in 2010,
18 wherein Jeffrey Burr, Esq., the attorney who drafted the ELN and LSN Trusts, respectively,
19 testified that Mr. Nelson and Ms. Nelson intended that the ELN Trust and the LSN Trust were
20 formed for purposes of asset protection and were not meant to alter the rights of the parties in
21 the event of a dissolution of marriage.

22 THE COURT FURTHER FINDS that while Mr. Nelson's opinion as to whether
23 property is community or separate is not controlling, Mr. Nelson testified that the property held
24 by the ELN Trust was community property, and, as such, supports Attorney Burr's testimony
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2 that the Trusts were formed for purposes of asset protection and not intended as a distribution
3 of the marital estate.

4 THE COURT FURTHER FINDS that based upon the testimony of Attorney Burr and
5 Mr. Nelson, it appears that Ms. Nelson does have a likelihood of success on the merits with
6 respect to her community interest claims concerning the ELN Trust and the assets held therein.

7 THE COURT FURTHER FINDS that although the ELN Trust asserts that there would
8 be an adequate remedy at law for Ms. Nelson if she were to prevail because money damages
9 could be readily ascertainable, Ms. Nelson would suffer irreparable harm based upon the
10 unique nature and character of the extensive real property contained in the ELN Trust; and the
11 distinct possibility that the assets contained in the ELN Trust could be sold or exchanged for
12 non-performing assets, thereby reducing the overall value of Ms. Nelson's community interest
13 claim and creating a strong likelihood that such value could not be recouped by Ms. Nelson.

14 THE COURT FURTHER FINDS that Lana Martin, as Trustee of the ELN Trust, must,
15 in accordance with its Articles and its fiduciary duties under NRS 163.380, be able to use any
16 funds or assets necessary to defend against any lawsuits, including this divorce action.¹

17 THE COURT FURTHER FINDS that Ms. Nelson is not entitled to attorney's fees as
18 the ELN Trust's Motion to Dissolve Injunction is not deemed to be frivolous.

19 THE COURT FURTHER FINDS that while the ELN Trust argues that it must be able
20 to conduct business in the ordinary course, specifically by allowing Mr. Nelson, as Investment
21 Trustee, to acquire and sell assets like the Wyoming Downs racetrack for the good of the ELN
22 Trust, such argument should not be entertained until the Court renders a determination as to
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28 ¹ NRS 163.380 provides that a person acting in his role as a fiduciary may utilize any income created by the Trust to pay professionals necessary to assist in the administration of the Trust, including attorneys.

1
2 Ms. Nelson's community interest claim against the ELN Trust and the property contained
3 therein.

4 THEREFORE, IT IS HEREBY ORDERED that the ELN Trust's Motion to Dissolve
5 Injunction is denied in its entirety.

6 IT IS FURTHER ORDERED that any monies received by Eric L. Nelson, or any entity
7 owned or controlled by Mr. Nelson, related to his ownership interest in the Silver Slipper
8 Casino/Dynasty Development Group, LLC, shall remain in his attorney's interest bearing
9 account and that the ELN Trust is otherwise enjoined from using any such monies received
10 from the sale of Dynasty Development Group LLC's interest in the Silver Slipper Casino
11 Venture LLC without an Order from this Court.

12 IT IS FURTHER ORDERED that Lana Martin, Trustee of ELN Trust, is free to seek
13 leave of this Court to obtain any funds or assets necessary to defend against any lawsuits,
14 including this divorce action, that will have a direct effect on the value of any properties that
15 are contained in the ELN Trust and, as such, are susceptible to a community interest claim.

16 IT IS FURTHER ORDERED that Ms. Nelson's Countermotion for Attorney's Fees and
17 Costs is denied in its entirety.

18 Dated this 31st day of January, 2012.

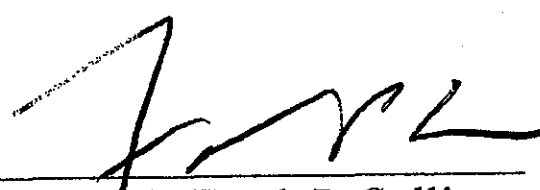
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24 Honorable Frank P. Sullivan
25 District Court Judge – Dept. O
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EXHIBIT 2

EXHIBIT 2

ERIC L. NELSON NEVADA TRUST

u/a/d 5/30/2001

11.12 Nevada Trustee. A Nevada Trustee is a person who/which is either (a) a natural person who resides in or is domiciled in the State of Nevada, or (b) a bank or trust company organized under federal law or under the laws of the State of Nevada or another state which maintains an office in the State of Nevada for the transactions of business. "Nevada Trustee" is also defined to include any person which qualifies as a Nevada Trustee pursuant to Nevada Revised Statutes Chapter 166.

11.13 Distribution Trustee. Any Trustee designated as a Distribution Trustee shall only be allowed to exercise discretion over distributions of the Trust estate. Said Trustee shall not be responsible for investment decisions for the Trust or for reporting, accounting or tax filings of the Trust. The Investment Trustee, by accepting such Trusteeship, agrees to indemnify and hold harmless the Distribution Trustee for all actions made by the Distribution Trustee in its capacity as Distribution Trustee, except for willful misconduct or actions of gross negligence.

11.14 Investment Trustee. The Investment Trustee(s) shall at all times have the exclusive custody of the entire Trust estate and shall be the legal owner of the Trust estate. The title to Trust properties need not include the name of the Distribution Trustee, and all Trustee powers, as set forth in Section 11.1 below, may be effected under the sole and exclusive control of the Investment Trustees, subject to the requirements for authorization of distributions to Trustor as set forth in Section 3.3 above.

ARTICLE XII

TRUSTEE POWERS AND LIMITATIONS

12.1 Trustee's Powers. No Trustee shall be liable to any beneficiary or heir of the Trustor for the Trustee's acts or failure to act, except for willful misconduct or gross negligence.

The Investment Trustee shall have the following powers, all of which are to be exercised in a fiduciary capacity:

- (a) To register any securities or other property held hereunder in the name of Investment Trustee or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee shall show that all such investments are part of his respective funds.
- (b) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as he may determine. As to each

consolidated fund, the division into the various shares comprising such fund need be made only upon Trustee's books of account.

- (c) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and unitization agreements.
- (d) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (e) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of his discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (f) To invest and reinvest in his absolute discretion, and he shall not be restricted in his choice of investments to such investments as are permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.
- (g) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (h) To institute, compromise, and defend any actions and proceedings.
- (i) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (j) Except as limited in Section 3.3 above, to partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustee may deem necessary to make division or partial or final distribution of any of the Trusts.
- (k) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (l) Except as limited by Section 3.3 above, to make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee, or by direct payment of such beneficiary's expenses.

- (m) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (n) To accept additions of property to the Trusts, whether made by the Trustor, a member of the Trustor's family, by any beneficiaries hereunder, or by any one interested in such beneficiaries.
- (o) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (p) To open and maintain safety deposit boxes in the name of this Trust.
- (q) Except as limited to by Section 3.3 above, to make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed. The Trustor requests but does not direct, that the Trustees make distributions in a manner which will result in maximizing the aggregate increase in income tax basis of assets of the estate on account of federal and state estate, inheritance and succession taxes attributable to appreciation of such assets.
- (r) Except as limited by Section 3.3 above, the powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (s) The enumeration of certain powers of the Trustee shall not limit his general powers, subject always to the discharge of his fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (t) To invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transactions will be effected.

- (u) To sell any property in the Trust estate, with or without notice, at public or private sale and upon such terms as the Trustee deems best, without appraisal or approval of court.
- (v) To invest and reinvest principal and income in such securities and properties as the Trustee shall determine. The Trustee is authorized to acquire, for cash or on credit (including margin accounts), every kind of property, real, personal or mixed, and every kind of investment (whether or not unproductive, speculative, or unusual in size of concentration), specifically including, but not by way of limitation, corporate or governmental obligations of every kind and stocks, preferred or common, of both domestic and foreign corporations, shares or interests in any unincorporated association, Trust, or investment company, including property in which the Trustee is personally interested or in which the Trustee owns an undivided interest in any other Trust capacity.
- (w) To deposit Trust funds in commercial savings or savings bank accounts in unlimited amounts for an unlimited period of time, with or without interest and subject to such restrictions upon withdrawal as the Trustee shall agree; any Trustee may sign on such account without any Trustee co-signature unless the signature card shall provide otherwise.
- (x) To borrow money for any Trust purpose upon such terms and conditions as may be determined by the Trustee, and to obligate the Trust estate for the repayment thereof; to encumber the Trust estate or any part thereof by mortgage, deed of trust, pledge or otherwise, for a term within or extending beyond the term of the Trust.
- (y) To grant options and rights of first refusal involving the sale or lease of any Trust asset and to sell upon deferred payments, or to acquire options and rights of first refusal for the purchase or lease of any asset, to purchase notes or accounts receivable whether secured or unsecured.
- (z) To employ and compensate, out of the principal or income or both, as the Trustee shall determine, such agents, persons, corporations or associations, including accountants, brokers, attorneys, tax specialists, certified financial planners, realtors, and other assistants and advisors deemed needful by the Trustees even if they are associated with a Trustee, for the proper settlement, investment and overall financial planning and administration of the trusts; and to do so without liability for any neglect, omission, misconduct, or default of any such person or professional representative provided such person was selected and retained with reasonable care.
- (aa) To invest and reinvest all or any part of the assets of any trust in any money management or registered investment advisory service which would provide for professional management of any such assets. In this regard, the Trustor specifically allows the Trustee to authorize the advisory service to have the discretionary

authority to invest and reinvest the assets transferred to such advisor by the Trustee without the requirement of prior approval of the Trustee on any transactions.

- (bb) Notwithstanding the prohibitions under N.R.S. 163.050 and any such Successor provisions, or notwithstanding any prohibitions against "self-dealing" as are provided under the laws of any other jurisdiction pursuant to which laws this Trust may be administered, any Trustee shall not be prohibited from engaging in acts of self-dealing with Trust property, either directly or indirectly, so long as such act of self-dealing is disclosed to the Distribution Trustee, and so long as the Trustee, in selling his, her or their own property or selling other properties in an agency or other fiduciary capacity to the Trust or in purchasing Trust assets for his, her or their personal account or in purchasing Trust assets in an agency or other fiduciary capacity, gives fair consideration in exchange for all Trust properties received. Where Trustees have engaged in acts of self-dealing for fair and adequate consideration, and has/have given notice to the Distribution Trustee, Trustee shall be relieved of any liability, sanction, and allegation of wrongdoing for such acts by any Court or other legal authority.
- (cc) To retain for any period of time any property which may be received or acquired, even though its retention by reason of its character or otherwise would not be appropriate apart from this provision.
- (dd) In the event the purchase, use or disposition of any trust property gives rise to either threatened or actual liability such that, in the sole opinion of the Trustees, the remaining assets of the Trust are thereby placed at risk of exposure to such liability, the Trustee shall be empowered to take such further and necessary steps as he deems prudent to protect and preserve the remaining assets of the trust, including but not limited to transferring such property giving rise to the threatened or actual liability to a separate trust formed to hold said property. The Trustee shall be further empowered to appoint an independent third party to act as Trustee over the newly-formed trust, and such trust shall be administered according to, and governed by the terms of, this Trust Agreement. The Beneficiaries of the new trust shall be the same beneficiaries as herein, and their interests in the new trust shall be in the same proportion as indicated herein. The Trustee of the new trust shall maintain records and books of accounts which are independent of and separate from the records and accounts maintained hereunder.
- (ee) The Trustee shall have the power to deal with matters involving the actual, threatened or alleged contamination of property held in the Trust estate (including any interests in partnerships or corporations and any assets owned by such business enterprises) by hazardous substances, or involving compliance with environmental laws. In particular, the Trustee may:
 - (1) Inspect and monitor trust property periodically, as necessary, to determine compliance with any environmental law affecting such property, with all

expenses of such inspection and monitoring to be paid from the income or principal of the trust;

- (2) Respond (or take any other action necessary to prevent, abate or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened violation of any environmental law affecting any of such property, the cost of which shall be payable from trust assets;
 - (3) Settle or compromise at any time any claim against the Trust related to any such matter asserted by any governmental body or private party;
 - (4) Disclaim any power which the Trustee determines may cause it to incur liability as a result of any such matter, whether such power is set forth herein, or granted or implied by any statute or rule of law.
- (ff) The Trustee shall not be personally liable to any beneficiary or other party interested in the Trust, or to any third parties, for any claim against the Trust for the diminution in value of Trust property resulting from such matters, including any reporting of or response to (1) the contamination of Trust property by hazardous substances; or (2) violations of any environmental laws related to the Trust; provided that the Trustee shall not be excused from liability for his, its or their own negligence or wrongful willful act.
- (gg) When used in this document the term "hazardous substance(s)" shall mean any substance defined as hazardous or toxic or otherwise regulated by any federal, state or local law(s) or regulation(s) relating to the protection of the environmental or human health ("environmental law(s)").
- (hh) Notwithstanding any contrary provision of this instrument, the Trustee may withhold a distribution to a beneficiary until receiving from the beneficiary an indemnification agreement in which the beneficiary agrees to indemnify the Trustee against any claims filed against the Trustee pursuant to any federal, state or local statute or regulation relating to clean up or management of hazardous substances.

12.2 Powers of Distribution Trustee. The Distribution Trustee shall have the power to authorize distributions of principal and/or income to the beneficiaries hereunder at times and in amounts as determined in the sole discretion of the Distribution Trustee, subject only to the veto power vested in the Trustor, according to the standards set forth in Section 3.1 above. Upon the death of the Trustor, the Successor Investment Trustee shall distribute the Trust estate as required pursuant to a duly exercised power of appointment, if any, and as otherwise provided herein, with respect to any of the Trust estate not so appointed by the Trustor.

receipt of or evidence of any such payment, distribution or application shall be a complete discharge and acquittance of such Trustee to the extent of such payment, distribution or application and, except for enforcement of any above described indemnification, such Trustee shall have no duty to see to the actual application of amounts so paid or distributed to others.

- (b) Notwithstanding the foregoing, however, where distributions are required to be made to or for the "direct" benefit of a person, only distributions made in the manner described in subparagraphs (1), (5), (6) (except for its parenthetical provision), (7) or (8) above shall be considered to have been made for the "direct" benefit of such person.

12.5 Compensation of Trustees. All Trustees may receive reasonable compensation for services rendered hereunder, plus extraordinary fees, if applicable, determined annually. Each separate Trust hereunder shall be chargeable with and may pay without application to any court:

- (a) The reasonable expenses of its Trustee(s) in the administration of such Trust, including the fees and expenses of such agents, attorneys, accountants and advisors as such Trustee(s) may employ in the administration of such Trust.
- (b) Compensation for a Corporate Trustee's services in the amount and at the time specified in its Schedule of Fees and Charges established from time to time for the administration of trusts of a character similar to the trust being administered and in effect when such compensation is payable.
- (c) Reasonable compensation for the services rendered and responsibilities assumed by each of such Trustee(s) in the administration of such Trust to be paid at reasonable intervals as incurred, with commencement and termination fees permitted only if agreed to by all of the Trustee(s) of such Trust in a written instrument approved by the Beneficiary of such Trust.
- (d) The employment of a person or firm and the payment of fees under Paragraph (a) above is specifically authorized notwithstanding the fact the person or firm so employed may be a Trustee or affiliated in business with any Trustee hereunder, provided the fees for the services rendered and responsibilities assumed in each capacity are reasonable and not duplicative.

12.6 Power to Appoint Agent. The Trustee is authorized to employ attorneys, accountants, investment managers, specialists, and such other agents as the Trustee shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said investment manager the discretionary power to acquire and dispose of assets of the Trust. The

Trustee may charge the compensation of such attorneys, accountants, investment managers, specialists, and other agents against the Trust, including any other related expenses.

12.7 Broad Powers Of Distribution. After the death of the Trustor, upon any division or partial or final distribution of the Trust estate, the successor Trustee shall have the power to partition, allot and distribute the Trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee, in the Trustee's discretion, considers necessary to make such division or distribution. In making any division or partial or final distribution of the Trust estate, the Trustee shall be under no obligation to make a pro rata division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustee may, in the Trustee's discretion, make non pro rata divisions between Trusts or shares and non pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The income tax basis of assets allocated or distributed non pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustee, in his or her discretion, and no adjustment need be made to compensate for any difference in basis.

12.8 Trustees' Liability. Except for the Trustees' own intentional and malicious breach of trust, bad faith, or gross negligence, the Trustees shall not be liable for any act, omission, loss, damage, or expense arising from the performance of the Trustees' duties under this Trust Agreement. The Trustees shall not be liable for making any investments or purchases on behalf of the Trust, nor shall the Trustees be required in any way to diversify investments nor shall the Trustees in any way be required to sell or otherwise dispose of speculative or non-productive property or assets owned or acquired by the Trust.

12.9 Indemnity. The Trustees shall, from the Trust assets, both principal and income, be indemnified and held harmless from and against any and all loss, cost, expense, and damage (including any attorney's fees) incurred by the Trustees arising out of or in any way connected with this Trust, the administration thereof, or related to any assets contained herein or for any other reason whatsoever.

12.10 Corporate Trustee. While there is a corporate Trustee acting, it shall have custody of all assets, books of account and records.

EXHIBIT 3

EXHIBIT 3

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	12/01/2011	18	A	1	225.00	0.40	90.00	Telephone conference with client and opposing counsel. Supplement and finalize stipulation and order.	ARCH
2998.0001	12/01/2011	1	A	1	585.00	0.20	117.00	Review Jeff Burr's email.	ARCH
2998.0001	12/01/2011	15	A	1	155.00	0.70	108.50	Conference with Mark A. Solomon and Jeffrey P. Luszeck regarding [REDACTED], conference with Layne Rushforth regarding [REDACTED]	ARCH
2998.0001	12/02/2011	18	A	1	225.00	3.60	810.00	Evaluate opposition to motion to dismiss. Telephone conference with client and Jeffrey Burr. Multiple conferences with Ross E. Evans and Mark A. Solomon regarding [REDACTED]	ARCH
2998.0001	12/02/2011	1	A	1	585.00	3.50	2,047.50	Review opposition to motion to dismiss. Confer with Jeffrey P. Luszeck and Ross E. Evans regarding [REDACTED]. Telephone conference with Layne Rushforth. Review cases. Telephone conference with Jeff Burr regarding [REDACTED]	ARCH
2998.0001	12/02/2011	15	A	1	155.00	1.80	279.00	Conference with Jeffrey P. Luszeck, Mark A. Solomon regarding [REDACTED], conference with Layne Rushforth regarding [REDACTED]; conduct legal research regarding NRS 78;	ARCH
2998.0001	12/04/2011	15	A	1	155.00	3.00	465.00	Conduct legal research on westlaw;	ARCH
2998.0001	12/05/2011	18	A	1	225.00	8.80	1,980.00	Telephone conference with client. Evaluate and respond to correspondence. Conduct legal research for reply to opposition to motion to dismiss.	ARCH
2998.0001	12/05/2011	1	A	1	585.00	0.70	409.50	Telephone conference with Layne Rushforth regarding [REDACTED]. Confer with Ross E. Evans and Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	12/05/2011	15	A	1	155.00	3.50	542.50	Conference with Jeffrey P. Luszeck and Mark A. Solomon regarding [REDACTED], Conference with Layne Rushforth regarding [REDACTED] review draft expert report from Layne Rushforth; conduct additional research on westlaw.	ARCH
2998.0001	12/06/2011	18	A	1	225.00	11.60	2,610.00	Continue to conduct legal research and draft opposition to motion to dismiss. Evaluate correspondence. Telephone conference with client.	ARCH
2998.0001	12/06/2011	1	A	1	585.00	1.50	877.50	Review email from Eric regarding [REDACTED]. Review draft reply section regarding [REDACTED]. Telephone call from Dickerson regarding [REDACTED]	ARCH
2998.0001	12/06/2011	15	A	1	155.00	5.60	868.00	Conduct research regarding [REDACTED] and draft section of Reply regarding [REDACTED]; conference with Mark A. Solomon and Jeffrey P. Luszeck.	ARCH
2998.0001	12/07/2011	18	A	1	225.00	9.40	2,115.00	Telephone conference with client and Dan Gerety. Conduct legal research and supplement reply to opposition to motion to dismiss.	ARCH
2998.0001	12/07/2011	1	A	1	585.00	1.70	994.50	Confer with Jeffrey P. Luszeck and Ross E. Evans regarding [REDACTED]. Telephone conference with Dan Gerety and telephone conference with Eric. Review and edit draft reply.	ARCH
2998.0001	12/07/2011	15	A	1	155.00	4.60	713.00	Continue research and drafting Reply memo;	ARCH
2998.0001	12/08/2011	18	A	1	225.00	8.10	1,822.50	Conduct legal research. Supplement reply to opposition to motion to dismiss. Evaluate and respond to correspondence. Evaluate opposition to motion to dissolve injunction and draft reply to the same.	ARCH
2998.0001	12/08/2011	1	A	1	585.00	3.10	1,813.50	Review and edit draft reply. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review Ross E. Evans' section regarding [REDACTED]. Review opposition to motion to vacate. Telephone conference with Eric. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review Eric's email regarding [REDACTED]	ARCH
2998.0001	12/08/2011	15	A	1	155.00	7.30	1,131.50	Continue legal research regarding [REDACTED]. Conference with Mark A. Solomon regarding [REDACTED]. Draft revisions to Reply; Conference with Jeffrey P. Luszeck regarding [REDACTED]	ARCH
2998.0001	12/09/2011	18	A	1	225.00	8.70	1,957.50	Supplement and finalize reply to opposition to motion to dismiss and reply to opposition to motion to dissolve injunction. Draft declaration of Eric L. Nelson. Telephone conference with client.	ARCH
2998.0001	12/09/2011	1	A	1	585.00	2.20	1,287.00	Review and edit Ross E. Evans' section regarding [REDACTED]. Review Eric's email regarding [REDACTED]. Review reply regarding [REDACTED]	ARCH
2998.0001	12/09/2011	15	A	1	155.00	5.30	821.50	Revise and finalize section of Reply brief; conference with Jeffrey P. Luszeck; conference with Mark A. Solomon regarding [REDACTED]; conduct legal research on westlaw;	ARCH
2998.0001	12/10/2011	1	A	1	585.00	2.50	1,462.50	Review cases and statutes regarding motion to dismiss. Telephone conference with Jeff Burr.	ARCH
2998.0001	12/11/2011	1	A	1	585.00	2.00	1,170.00	Prepare for hearing. Work on argument. Legal	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 2998.0001 Nelson, Eric (1)								
2998.0001	12/12/2011	2	A	1	390.00	1.20	468.00 research regarding [REDACTED] Conference with Mark A. Solomon regarding [REDACTED]. Legal research regarding [REDACTED]. Follow up conference with Mark A. Solomon. Telephone conference with Jeffrey Burr. Confer with Mark A. Solomon regarding [REDACTED]. Evaluate and respond to correspondence. Research regarding [REDACTED] confer with Mark A. Solomon regarding [REDACTED]. Prepare for hearing. Telephone conference with Jeff Burr. Review cases. Confer with Jeffrey P. Luszeck and Ross E. Evans regarding [REDACTED]. Conference with Mark A. Solomon regarding [REDACTED]. [REDACTED] conduct supplemental research; Conduct legal research. Prepare for, travel to and attend hearing on motion to dismiss. Review Rhonda's joinder. Telephone conference with Eric. Review emails regarding [REDACTED]. Review contract regarding [REDACTED]. Attend hearing on vacation of injunction and motion to dismiss. Telephone conference with client. Confer with Mark A. Solomon regarding [REDACTED]. Review 1st amended answer and counterclaim. Compare documents as requested by Jeffrey P. Luszeck. Review email from Eric regarding [REDACTED]. Telephone conference with client. Telephone conference with client. Evaluate and respond to correspondence. Review notice of corrected assets from Birch. Confer with Ross E. Evans and Mark A. Solomon regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED]. [REDACTED] and [REDACTED] regarding motion to dismiss and [REDACTED] report. Review correspondence from Eric regarding [REDACTED] complaint. Conference with Mark A. Solomon and Jeffrey P. Luszeck regarding [REDACTED]; conduct legal research on Westlaw; Evaluate first amended claims. Draft correspondence to opposing counsel. Confer with Mark A. Solomon regarding [REDACTED]. Conduct legal research. Conference with Jeffrey P. Luszeck regarding [REDACTED]. conduct research on Westlaw regarding [REDACTED] dismissal. Review Jeffrey P. Luszeck's email to Rhonda regarding [REDACTED]. Review amended complaint. Conduct legal research. Draft supplemental motion to dismiss. Review file regarding [REDACTED] dismissal. Review trusts regarding [REDACTED]. Review Burr testimony. Continue research on westlaw; conference with Jeffrey P. Luszeck; Continue to draft supplement to motion to dismiss. Conference with Jeffrey P. Luszeck regarding [REDACTED]. review email from Jeffrey P. Luszeck regarding [REDACTED]. Draft Initial Disclosures, Notice of Taking Deposition and Subpoena for deposition of Jeffrey Burr. Prepare disc with disclosure documents. Continue to draft supplement to motion to dismiss. Continue to draft supplement to motion to dismiss. Conduct legal research. Supplement and finalize supplemental motion to dismiss. Evaluate and respond to correspondence. Review and edit motion to dismiss. Telephone conference with Jeffrey P. Luszeck regarding [REDACTED]. Evaluate and respond to correspondence. Telephone conference with Mark A. Solomon regarding [REDACTED]. Telephone conference with Jeffrey P. Luszeck regarding [REDACTED]. Review Dickerson's letter with settlement proposals. Prepare for and attend conference with client. Prepare for and attend meeting with clients, Rhonda and Dan Gerety. Evaluate and respond to correspondence. Telephone conference with client. Evaluate issues pertaining to	ARCH
2998.0001	12/12/2011	18	A	1	225.00	0.80	180.00	ARCH
2998.0001	12/12/2011	4	A	1	185.00	1.80	333.00	ARCH
2998.0001	12/12/2011	1	A	1	585.00	4.00	2,340.00	ARCH
2998.0001	12/12/2011	15	A	1	155.00	0.80	124.00	ARCH
2998.0001	12/13/2011	18	A	1	225.00	5.40	1,215.00	ARCH
2998.0001	12/13/2011	1	A	1	585.00	3.40	1,989.00	ARCH
2998.0001	12/14/2011	18	A	1	225.00	0.30	67.50	ARCH
2998.0001	12/21/2011	1	A	1	585.00	1.00	585.00	ARCH
2998.0001	12/23/2011	5	A	1	170.00	2.40	408.00	ARCH
2998.0001	12/23/2011	1	A	1	585.00	0.30	175.50	ARCH
2998.0001	01/04/2012	18	A	1	240.00	0.10	24.00	ARCH
2998.0001	01/05/2012	18	A	1	240.00	0.40	96.00	ARCH
2998.0001	01/05/2012	1	A	1	590.00	0.40	236.00	ARCH
2998.0001	01/06/2012	18	A	1	240.00	0.20	48.00	ARCH
2998.0001	01/06/2012	1	A	1	590.00	1.10	649.00	ARCH
2998.0001	01/09/2012	15	A	1	175.00	1.80	315.00	ARCH
2998.0001	01/10/2012	18	A	1	240.00	2.70	648.00	ARCH
2998.0001	01/10/2012	15	A	1	175.00	2.30	402.50	ARCH
2998.0001	01/10/2012	1	A	1	590.00	0.80	472.00	ARCH
2998.0001	01/11/2012	18	A	1	240.00	3.40	816.00	ARCH
2998.0001	01/11/2012	1	A	1	590.00	1.30	767.00	ARCH
2998.0001	01/11/2012	15	A	1	175.00	1.50	262.50	ARCH
2998.0001	01/12/2012	18	A	1	240.00	3.80	912.00	ARCH
2998.0001	01/12/2012	15	A	1	175.00	0.30	52.50	ARCH
2998.0001	01/13/2012	17	A	1	190.00	3.50	665.00	ARCH
2998.0001	01/13/2012	18	A	1	240.00	4.20	1,008.00	ARCH
2998.0001	01/14/2012	18	A	1	240.00	1.50	360.00	ARCH
2998.0001	01/16/2012	18	A	1	240.00	2.40	576.00	ARCH
2998.0001	01/17/2012	18	A	1	240.00	4.20	1,008.00	ARCH
2998.0001	01/17/2012	1	A	1	590.00	1.30	767.00	ARCH
2998.0001	01/18/2012	18	A	1	240.00	0.50	120.00	ARCH
2998.0001	01/18/2012	1	A	1	590.00	1.40	826.00	ARCH
2998.0001	01/19/2012	18	A	1	240.00	2.90	696.00	ARCH
2998.0001	01/19/2012	1	A	1	590.00	2.50	1,475.00	ARCH
2998.0001	01/20/2012	18	A	1	240.00	1.70	408.00	ARCH

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID 2998.0001 Nelson, Eric (1)								
2998.0001	01/20/2012	1	A	1	590.00	1.10	649.00	ARCH
							trial testimony of Jeffrey Burr. Supplement and finalize notice of deposition.	
2998.0001	01/23/2012	18	A	1	240.00	0.50	120.00	ARCH
							Review notice of joinder. Review Eric's emails regarding [REDACTED]. Review email from Nick Miller. Review and edit correspondence to Eric.	
2998.0001	01/23/2012	1	A	1	590.00	0.80	472.00	ARCH
2998.0001	01/24/2012	18	A	1	240.00	1.50	360.00	ARCH
							Telephone conference with client and opposing counsel. Evaluate correspondence.	
2998.0001	01/24/2012	1	A	1	590.00	0.30	177.00	ARCH
							Review Eric's email regarding [REDACTED].	
2998.0001	01/25/2012	18	A	1	240.00	0.50	120.00	ARCH
							Evaluate and respond to correspondence. Telephone conference with client and opposing counsel.	
2998.0001	01/26/2012	18	A	1	240.00	0.70	168.00	ARCH
2998.0001	01/27/2012	1	A	1	590.00	2.50	1,475.00	ARCH
							Telephone conference with Dan Gerety regarding [REDACTED].	
							Telephone conference with client. Confer with Mark A. Solomon regarding [REDACTED].	
							Evaluate deposition transcript of Jeff Burr.	
							Review Bertsch's letter to Judge. Review Sources and Apps analysis for ELN Trust. Review supplement to opposition to motion to dismiss and opposition to motion to dismiss and strike.	
2998.0001	01/30/2012	18	A	1	240.00	7.30	1,752.00	ARCH
							Evaluate opposition to motion to dismiss. Conduct legal research. Draft exhibit. Confer with Mark A. Solomon regarding [REDACTED].	
2998.0001	01/30/2012	1	A	1	590.00	1.40	826.00	ARCH
							Telephone conference with Jeffrey P. Luszeck regarding [REDACTED]. Review cases regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED].	
2998.0001	01/31/2012	18	A	1	240.00	5.80	1,392.00	ARCH
2998.0001	01/31/2012	1	A	1	590.00	3.90	2,301.00	ARCH
							Prepare, for travel to and attend hearing.	
							Prepare for and attend hearing on motion to dismiss and strike. Telephone conference with Dan Gerety regarding [REDACTED].	
2998.0001	02/01/2012	18	P	1	240.00	0.40	96.00	234
							Evaluate and respond to correspondence. Confer with Mark A. Solomon regarding [REDACTED].	
2998.0001	02/01/2012	1	P	1	590.00	0.70	413.00	249
							Review Eric's email regarding [REDACTED]. Review email regarding [REDACTED].	
2998.0001	02/02/2012	17	P	1	190.00	1.00	190.00	235
							Conference with Jeffrey P. Luszeck. Revise Subpoena and Amended Notice of Deposition for video-taped deposition. Revise Acceptance of Service. Mail Amended Notice of Deposition and Subpoena to interested parties and serve Subpoena.	
2998.0001	02/02/2012	18	P	1	240.00	0.20	48.00	236
							Evaluate correspondence. Confer with Mark A. Solomon.	
2998.0001	02/03/2012	18	P	1	240.00	1.30	312.00	237
							Evaluate order denying motion to release funds. Draft correspondence to client regarding [REDACTED]. Look into trial exhibits.	
2998.0001	02/06/2012	18	P	1	240.00	0.60	144.00	238
2998.0001	02/06/2012	1	P	1	590.00	0.20	118.00	253
2998.0001	02/08/2012	18	P	1	240.00	1.30	312.00	239
							Evaluate and respond to correspondence. Evaluate documents in preparation of J Jeffrey Burr deposition.	
2998.0001	02/09/2012	18	P	1	240.00	1.40	336.00	240
							Evaluate deposition transcript of Jeffrey Burr. Evaluate and respond to correspondence.	
2998.0001	02/10/2012	18	P	1	240.00	0.30	72.00	241
2998.0001	02/12/2012	18	P	1	240.00	0.30	72.00	242
2998.0001	02/13/2012	17	P	1	190.00	0.20	38.00	243
							Telephone conference with client.	
							Evaluate documents disclosed by Jeffrey Burr.	
							Conference with Jeffrey P. Luszeck. Review bated stamped documents and provide information to Jeffrey P. Luszeck.	
2998.0001	02/13/2012	18	P	1	240.00	0.30	72.00	244
							Telephone conference with court regarding [REDACTED].	
2998.0001	02/14/2012	18	P	1	240.00	0.30	72.00	245
2998.0001	02/15/2012	18	P	1	240.00	3.50	840.00	246
							Telephone conference with client.	
							Evaluate transcript of Jeffrey Burr. Evaluate documents for use at deposition.	
2998.0001	02/16/2012	18	P	1	240.00	3.40	816.00	247
							Draft deposition outline. Evaluate correspondence from client.	
2998.0001	02/16/2012	1	P	1	590.00	1.50	885.00	255
							Review Burr materials regarding [REDACTED].	
2998.0001	02/17/2012	18	P	1	240.00	1.40	336.00	248
2998.0001	02/17/2012	1	P	1	590.00	2.20	1,298.00	256
							Continue to evaluate documents for use at deposition.	
							Telephone conference with Bob Dickerson regarding [REDACTED]. Confer with Jeffrey P. Luszeck regarding [REDACTED]. Review materials for Burr's deposition. Review outline.	
2998.0001	02/21/2012	19	P	1	200.00	0.20	40.00	250
							Conference with Jeffrey P. Luszeck regarding attorney-client research project.	
2998.0001	02/21/2012	18	P	1	240.00	4.40	1,056.00	251
							Prepare deposition outline and review documents for the same. Telephone conference with client.	
2998.0001	02/21/2012	17	P	1	190.00	1.50	285.00	252
							Conference with Jeffrey P. Luszeck. Prepare deposition binders and exhibits for deposition of Jeffrey Burr.	
2998.0001	02/21/2012	1	P	1	590.00	2.20	1,298.00	266
							Confer with Jeffrey P. Luszeck regarding deposition preparation and review [REDACTED].	
2998.0001	02/22/2012	18	P	1	240.00	6.50	1,560.00	254
2998.0001	02/22/2012	1	P	1	590.00	6.50	3,835.00	267
							Prepare for and attend deposition of Jeffrey Burr.	
							Prepare for and attend Jeff Burr deposition. Meet with client regarding same.	

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Client ID 2998.0001 Nelson, Eric (1)									
2998.0001	02/23/2012	18	P	1	240.00	2.80	672.00	Prepare for, travel to, and attend hearing.	260
2998.0001	02/23/2012	1	P	1	590.00	1.50	885.00	Review sources and apps analysis regarding [REDACTED], [REDACTED]. Attend hearing regarding [REDACTED].	268
2998.0001	02/24/2012	19	P	1	200.00	1.00	200.00	Began initial Westlaw research on issue [REDACTED].	257
2998.0001	02/24/2012	18	P	1	240.00	0.30	72.00	Evaluate and respond to correspondence.	261
2998.0001	02/24/2012	1	P	1	590.00	0.10	59.00	Review email regarding [REDACTED] with [REDACTED].	269
2998.0001	02/27/2012	18	P	1	240.00	2.80	672.00	Prepare for and attend meeting with client. Draft correspondence to the same.	258
2998.0001	02/27/2012	19	P	1	200.00	1.40	280.00	Performed additional Westlaw research; drafted memo to Jeffrey P. Luszeck regarding [REDACTED] [REDACTED] [REDACTED] [REDACTED], conference with Mark A. Solomon regarding [REDACTED].	259
2998.0001	02/27/2012	1	P	1	590.00	2.60	1,534.00	Meet with Eric, Lana, Rochelle, Dan Gerety and Jeffrey P. Luszeck regarding [REDACTED]. Review Jeffrey P. Luszeck's memo regarding [REDACTED]. Review Alexander G. LeVeque's memo regarding [REDACTED] [REDACTED] [REDACTED].	270
2998.0001	02/28/2012	18	P	1	240.00	2.60	624.00	Draft motion for attorneys' fees.	262
2998.0001	02/28/2012	19	P	1	200.00	1.20	240.00	Performed additional Westlaw research regarding [REDACTED] [REDACTED] [REDACTED] [REDACTED] revised memo to Mark A. Solomon regarding [REDACTED].	263
2998.0001	02/28/2012	1	P	1	590.00	1.50	885.00	Confer with Jeffrey P. Luszeck regarding [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] Review source and app analysis for Lynita and same for ELN Trust.	271
2998.0001	02/29/2012	18	P	1	240.00	1.10	264.00	Evaluate notices of depositions and subpoenas. Evaluate and draft correspondence. Supplement motion for attorneys' fees.	264
Total for Client ID 2998.0001					Billable	254.40	78,730.50	Nelson, Eric (1) Eric L. Nelson Nevada Trust dated May 30, 2001	
GRAND TOTALS									
					Billable	254.40	78,730.50		

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Amount	Ref #
Client ID 2998.0001 Nelson, Eric (1)							
2998.0001	12/01/2011	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	12/01/2011	1	A	51	0.250	44.50 Laser copy charges.	ARCH
2998.0001	12/01/2011	1	A	70		3.50 Electronic filing fee (Ex Parte Application).	ARCH
2998.0001	12/02/2011	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	12/02/2011	1	A	51	0.250	12.00 Laser copy charges.	ARCH
2998.0001	12/05/2011	1	A	51	0.250	4.25 Laser copy charges.	ARCH
2998.0001	12/08/2011	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	12/08/2011	1	A	51	0.250	15.75 Laser copy charges.	ARCH
2998.0001	12/08/2011	1	A	70		3.50 Electronic filing fee (Stipulation and Order - Motion to Dismiss).	ARCH
2998.0001	12/09/2011	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	12/09/2011	1	A	51	0.250	78.50 Laser copy charges.	ARCH
2998.0001	12/09/2011	1	A	70		3.50 Electronic filing fee (Reply to Opposition to Motion to Dismiss).	ARCH
2998.0001	12/09/2011	1	A	70		3.50 Electronic filing fee (Reply to Opposition to Motion to Dissolve Injunction).	ARCH
2998.0001	12/09/2011	1	A	70		3.50 Electronic filing fee (Notice of Entry of Stipulation and Order).	ARCH
2998.0001	12/12/2011	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	12/12/2011	1	A	51	0.250	13.25 Laser copy charges.	ARCH
2998.0001	12/13/2011	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	12/13/2011	1	A	51	0.250	0.75 Laser copy charges.	ARCH
2998.0001	12/13/2011	1	A	70		3.50 Electronic filing fee (Receipt of Copy - Reply to Opposition).	ARCH
2998.0001	12/21/2011	1	A	51	0.250	11.50 Laser copy charges.	ARCH
2998.0001	12/31/2011	1	A	82	2.000	620.98 Westlaw online legal research.	ARCH
2998.0001	12/31/2011	1	A	53		0.88 Postage December 2011.	ARCH
2998.0001	01/04/2012	1	A	51	0.250	11.00 Laser copy charges.	ARCH
2998.0001	01/05/2012	1	A	51	0.250	19.75 Laser copy charges.	ARCH
2998.0001	01/06/2012	1	A	51	0.250	10.75 Laser copy charges.	ARCH
2998.0001	01/09/2012	1	A	56		25.00 CD of 12-13-11 Hearing - Clark County Treasurer.	ARCH
2998.0001	01/09/2012	1	A	51	0.250	2.00 Laser copy charges.	ARCH
2998.0001	01/10/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	01/10/2012	1	A	51	0.250	1.50 Laser copy charges.	ARCH
2998.0001	01/11/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	01/13/2012	1	A	51	0.250	1.75 Laser copy charges.	ARCH
2998.0001	01/17/2012	1	A	51	0.250	26.75 Laser copy charges.	ARCH
2998.0001	01/17/2012	1	A	70		3.50 Electronic filing fee (Certificate of Mailing - Motion to Dismiss).	ARCH
2998.0001	01/17/2012	1	A	70		3.50 Electronic filing fee (Motion to Dismiss).	ARCH
2998.0001	01/19/2012	1	A	51	0.250	1.25 Laser copy charges.	ARCH
2998.0001	01/20/2012	1	A	51	0.250	0.50 Laser copy charges.	ARCH
2998.0001	01/23/2012	1	A	51	0.250	2.00 Laser copy charges.	ARCH
2998.0001	01/24/2012	1	A	72	8.000	8.00 Courier fee.	ARCH
2998.0001	01/24/2012	1	A	51	0.250	0.25 Laser copy charges.	ARCH
2998.0001	01/30/2012	1	A	51	0.250	70.75 Laser copy charges.	ARCH
2998.0001	01/31/2012	1	A	51	0.250	17.25 Laser copy charges.	ARCH
2998.0001	01/31/2012	1	A	82	2.000	450.96 Westlaw online legal research - January 2012.	ARCH
2998.0001	01/31/2012	1	A	53		7.22 Postage - January 2012.	ARCH
2998.0001	02/02/2012	1	P	21		35.00 Witness Fee - Jeffrey Burr, Ltd.	102
2998.0001	02/02/2012	1	P	51	0.250	3.75 Laser copy charges.	103
2998.0001	02/02/2012	1	P	72	8.000	8.00 Courier fee.	104
2998.0001	02/09/2012	1	P	51	0.250	121.75 Laser copy charges.	105
2998.0001	02/14/2012	1	P	51	0.250	180.25 Laser copy charges.	106
2998.0001	02/15/2012	1	P	72	8.000	8.00 Courier fee.	107
2998.0001	02/17/2012	1	P	51	0.250	0.50 Laser copy charges.	108
2998.0001	02/21/2012	1	P	51	0.250	321.25 Laser copy charges.	109
2998.0001	02/22/2012	1	P	51	0.250	24.25 Laser copy charges.	110
2998.0001	02/28/2012	1	P	51	0.250	4.75 Laser copy charges.	112
2998.0001	02/29/2012	1	P	51	0.250	4.75 Laser copy charges.	111
2998.0001	02/29/2012	1	P	53		0.90 Postage February 2012.	113
2998.0001	02/29/2012	1	P	82	2.000	191.24 Westlaw online legal research.	114

Total for Client ID 2998.0001	Billable	2,455.43	Nelson, Eric (1)
			Eric L. Nelson Nevada Trust dated May 30, 2001

GRAND TOTALS

Billable	2,455.43
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EXHIBIT 4

EXHIBIT 4

Gerety & Associates, CPAs

6817 S. Eastern Ave.
Suite 101
Las Vegas, NV 89119
(702) 933-2213

Date: 02/29/2012

Eric Nelson

3611 Lindell Road, Suite 201
Las Vegas, NV 89103

Date	Type	Reference	Due Date	Debit	Credit	Balance
10/17/11	Invoice #10876		11/01/11	8,421.05		8,421.05
01/25/12	Invoice #11246		02/09/12	26,480.00		34,901.05
02/29/12	Amount Due					<u>\$34,901.05</u>

<u>02/29/2012</u>	<u>01/31/2012</u>	<u>12/31/2011</u>	<u>11/30/2011</u>	<u>10/31/2011+</u>	<u>Total</u>
0.00	26,480.00	0.00	0.00	8,421.05	\$34,901.05

Please return this portion with payment.

Date: 02/29/2012

ID: NELSONERIC

Eric Nelson

3611 Lindell Road, Suite 201
Las Vegas, NV 89103

Amount Due: \$34,901.05

Amount Enclosed: \$ _____

FILED
3/27/12

OPPS
THE DICKERSON LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
KATHERINE L. PROVOST, ESQ.
Nevada Bar No. 008414
JOSEF M. KARACSONYI, ESQ.
Nevada Bar No. 010634
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600
Facsimile: (702) 388-0210
Email: info@dickersonlawgroup.com
Attorneys for LYNITA SUE NELSON

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON,

Defendant/Counterclaimant.

CASE NO. D-09-411537-D
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST
dated May 30, 2001, and LSN NEVADA
TRUST dated May 30, 2001,

Necessary Parties (joined in this
action pursuant to Stipulation and
Order entered on August 9, 2011)

LANA MARTIN, as Distribution Trustee of
the ERIC L. NELSON NEVADA TRUST
dated May 30, 2001,

Necessary Party (joined in this action
pursuant to Stipulation and Order
entered on August 9, 2011)/ Purported
Counterclaimant and Crossclaimant,

v.

1 LYNITA SUE NELSON and ERIC
2 NELSON,

3 Purported Cross-Defendant and
4 Counterdefendant,

5 LYNITA SUE NELSON,

6 Counterclaimant, Cross-Claimant,
7 and/or Third Party Plaintiff,

8 v.

9 ERIC L. NELSON, individually and as the
10 Investment Trustee of the ERIC L. NELSON
11 NEVADA TRUST dated May 30, 2001; the
12 ERIC L. NELSON NEVADA TRUST dated
13 May 30, 2001; LANA MARTIN, individually,
14 and as the current and/or former Distribution
15 Trustee of the ERIC L. NELSON NEVADA
16 TRUST dated May 30, 2001, and as the
17 former Distribution Trustee of the LSN
18 NEVADA TRUST dated May 30, 2001);
19 NOLA HARBER, individually, and as the
20 current and/or former Distribution Trustee
21 of the ERIC L. NELSON NEVADA TRUST
22 dated May 30, 2001, and as the current
23 and/or former Distribution Trustee of the
24 LSN NEVADA TRUST dated May 30, 2001;
25 ROCHELLE McGOWAN, individually;
26 JOAN B. RAMOS, individually; and DOES I
27 through X,

28 Counterdefendant, and/or
Cross-Defendants, and/or
Third Party Defendants.

**OPPOSITION TO MOTION FOR PAYMENT OF ATTORNEYS' FEES AND
COSTS, AND COUNTERMOTION FOR RECEIVER, ADDITIONAL
INJUNCTION, AND FEES AND COSTS**


COMES NOW Defendant, LYNITA NELSON ("Lynita"), by and through her
attorneys, ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and
JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, and hereby
submits her Opposition to Motion for Payment of Attorneys' Fees and Costs, filed by
Counterdefendant/Crossdefendant/Third-Party Defendant Lana Martin ("Ms.
Martin"), as Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30,

1 2001 ("ELN Trust"), and Countermotion for Receiver, Additional Injunction, and Fees
2 and Costs.

3 In support of her Opposition and Countermotion, Defendant relies upon the
4 pleadings and papers on file herein, the following Memorandum of Points and
5 Authorities, all documentary evidence attached hereto, and any oral argument as this
6 Court may entertain at the hearing on this matter.

7 DATED this 26th day of March, 2012.

8
9 THE DICKERSON LAW GROUP

10
11 By 
12 ROBERT P. DICKERSON, ESQ.
13 Nevada Bar No. 000945
14 KATHERINE L. PROVOST, ESQ.
15 Nevada Bar No. 008414
16 JOSEF M. KARACSONYI, ESQ.
17 Nevada Bar No. 010634
18 1745 Village Center Circle
19 Las Vegas, Nevada 89134
20 Attorneys for LYNITA NELSON
21
22
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24
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1 POINTS AND AUTHORITIES

2 I. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

3 Lynita and Eric Nelson ("Eric") were married on September 17, 1983. They
4 have been married for twenty-eight (28) years, and are the parents of five (5) children
5 born the issue of their marriage. Three (3) of the parties' children are now adults.
6 Custody of the remaining two (2) minor children was resolved by the parties'
7 Stipulated Parenting Agreement signed October 15, 2008, and entered as an Order of
8 this Court on February 8, 2010. Trial of the financial issues in this action began in
9 August 2010, and remains unresolved. Trial is scheduled to resume on July 16, 2012.

10 On December 13, 2011, the parties appeared before this Court on Ms. Martin's
11 and the ELN Trust's Motion to Dissolve Injunction ("Motion to Dissolve"). The
12 Motion to Dissolve sought the release of \$1,568,000.00 that the ELN Trust received
13 for Dynasty Development Group, LLC's interest in Silver Slipper Casino. Said funds
14 were previously frozen by the Court in a trust account maintained by Eric's former
15 counsel, David Stephens, Esq. The ELN Trust requested release of such funds, in part,
16 "for an opportunity to purchase Wyoming Racing LLC, a horse racing track and RV
17 park, for \$440,000.00."¹

18 At the December 13, 2011 hearing, the Court denied the ELN Trust's Motion
19 to Dissolve, reissuing its injunction freezing the \$1,568,000.00 held in Mr. Stephens'
20 trust account. Exhibit A, Findings of Fact and Order from December 13, 2011 hearing,
21 entered January 31, 2012. In its Order, the Court specifically found that "the ELN
22 Trust and the assets contained therein are subject to a community interest claim by
23 [Lynita] which the Court has yet to rule upon," and that NRS 125.050, NRCP 65(f),
24 EDCR 5.20 and 5.85, "promote a policy of empowering this Court to use injunctive
25 relief to preserve the status quo of the marital estate and to ensure that the value of the
26 marital estate will not be decreased unilaterally as both parties are entitled to an
27 equitable share of the marital estate." Exhibit A, pg. 6, lines 1-2, and 9-13. While the

28 ¹ Motion to Dissolve Injunction, pg. 6, lines 15-17.

1 Court denied the Motion to Dissolve, it did allow for the ELN Trust to “seek leave of
2 this Court to obtain any funds or assets necessary to defend against any lawsuits,
3 including this divorce action” Exhibit A, pg. 8, lines 13-17 (emphasis added).

4 On March 6, 2012, Ms. Martin filed the ELN Trust’s instant Motion for
5 Payment of Attorneys’ Fees and Costs (“Motion”), requesting the release of
6 \$208,529.94 from the monies being held in Mr. Stephens’ trust account. Specifically,
7 the ELN Trust requests \$128,682.89 for Solomon Dwiggins & Freer, Ltd., \$59,901.05
8 for Gerety & Associates, CPA, and \$20,000.00 for The Rushford Firm. Noticeably
9 absent from the Motion is any statement of the ELN Trust’s need for such funds to pay
10 the aforementioned legal fees and costs, or an accounting of assets held by the ELN
11 Trust showing an inability to meet its obligations for fees and costs without release of
12 the funds requested. As will be shown below, this omission was not unintentional.

13 While the ELN Trust requests release of the only liquid funds currently being
14 preserved by the Court for division in this divorce action, the ELN Trust continues to
15 conduct business as usual through Eric, expending hundreds of thousands of dollars
16 that are subject to a claim of community interest, and encumbering any assets held or
17 acquired which are subject to a claim of community interest. Specifically, after the
18 December 13, 2011 hearing, the ELN Trust concluded its purchase of the property
19 located at 10180 State Highway North, Unita County, Wyoming 82930 (“Wyoming
20 Downs property”), from Wyoming Racing, LLC (“Wyoming Racing”). Exhibit B,
21 Special Warranty Deed, recorded January 6, 2012. This is the same property that Eric
22 and the ELN Trust represented to the Court, at the December 13, 2011 hearing, could
23 not be purchased without the release of the \$1,568,000.00 from Mr. Stephens’ trust
24 account:

25 [The ELN Trust] has a contract to purchase Wyoming Downs at
26 \$450,000.00 and it needs its proceeds to complete its transaction. It has
\$75,000.00 down that’s going to be forfeited under the terms of the
contract at least if we don’t have the monies to close.

27 [12-13-11 Hearing VTS 13:52:53, by Mr. Solomon]
28

1 We're not trying to waste money, we're not trying to throw it away, hide
2 it, we're trying to invest it, and invest it for profit.

3 [12-13-11 Hearing VTS 13:53:31, by Mr. Solomon]

4 On January 6, 2012, a Special Warranty Deed was recorded in Uinta County,
5 Wyoming, granting Dynasty Development, LLC, the Wyoming Downs property owned
6 by Wyoming Racing. Although the purchase price of the Wyoming Downs property
7 was only \$440,000.00, and the ELN Trust had already put a deposit of \$75,000.00
8 down towards such purchase, as shown on the Real Estate Purchase and Sale
9 Agreement attached hereto as Exhibit C,² the ELN Trust (Eric) borrowed \$700,000.00
10 against the Wyoming Downs property concurrently upon the purchase of same, thereby
11 cashing out nearly \$335,000.00 in equity that presumably existed in the property at
12 the time of purchase. Exhibit D, Mortgage, recorded January 6, 2012.

13 Eric and the ELN Trust received \$335,000.00 in proceeds from the mortgage
14 taken out on the Wyoming Downs property at the time of purchase (\$700,000.00 loan
15 - (\$440,000.00 purchase price - \$75,000.00 deposit previously applied towards
16 purchase)). The ELN Trust and Eric have not made any attempt to disclose this
17 transaction to the Court, or to Lynita. Instead, Lynita was required to incur additional
18 fees researching the disposition of this transaction, and obtaining documentation from
19 Uinta County, Wyoming concerning same.

20 The ELN Trust's, and Eric's failure to show a need for the funds requested from
21 Mr. Stephens' trust account, failure to disclose the state of the ELN Trust's financial
22 affairs, and continued encumbrance of, and cashing out of equity in, properties held or
23 acquired by such trust during these proceedings, is in line with a continuous course of
24 action by Eric to frustrate the efficacy of any future orders entered by this Court with
25 regards to the property at issue in this divorce action, and to leave Lynita with nothing
26 upon divorce. As the Court is aware, for the duration of these proceedings Eric has

27
28 ² The Real Estate Purchase and Sale Agreement was provided to the Court as Exhibit "3" to the
ELN Trust's Motion to Dissolve.

- P. Ending Cash - As of May 31, 2011, according to the Peachtree files, Banone-AZ had an ending bank balance of \$10,894.92 as shown below:

Account	Amount
Bank of America #7064	5,418.35
City National Bank #0807	5,476.57
	<u>10,894.92</u>

Larry L. Bertsch, CPA & Associates reserves the right to update this report upon the production of documents and/or evidence relating to the transactions contained in this report.

FILED
JUN 24 2015
Alana L. Sullivan
CLERK OF COURT

1 TRANS

2
3 COPY

4
5 EIGHTH JUDICIAL DISTRICT COURT
6 FAMILY DIVISION
7 CLARK COUNTY, NEVADA

8 ERIC L. NELSON)

9 Plaintiff,)

CASE NO. D-09-411537-D

10 vs.)

DEPT. O

11 LYNITA NELSON)

12 Defendant.)

SEALED

13
14
15 BEFORE THE HONORABLE FRANK P. SULLIVAN
16 DISTRICT COURT JUDGE

17
18 TRANSCRIPT RE: DECISION

19
20 THURSDAY, FEBRUARY 23, 2012

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APPEARANCES:

The Plaintiff:	ERIC NELSON
For the Plaintiff:	MARK A. SOLOMON, ESQ.
	JEFFREY P. LUSZECK, ESQ.
	9060 W. Cheyenne Ave.
	Las Vegas, Nevada 89129
	(702) 853-5483
	RHONDA K. FORSBERG, ESQ.
	64 N. Pecos Rd. #800
	Henderson, NV 89074
	(702) 990-6468
The Defendant:	LYNITA NELSON
For the Defendant:	ROBERT P. DICKERSON, ESQ.
	KATHERINE L. PROVOST, ESQ.
	JOSEF M. KARACSONYI, ESQ.
	1745 Village Center Cir.
	Las Vegas, Nevada 89134
	(702) 388-8600
Also Present:	MELISSA ATTANASIO

1 LAS VEGAS, NEVADA

THURSDAY, FEBRUARY 23, 2012

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 15:08:07)

4
5 THE COURT: I appreciate everybody coming today.
6 This is the time set in the matter of Eric and Lynita Nelson,
7 Case Number D411537. We'll get everybody's appearance for the
8 record, and we'll explain what's going on here today and get
9 everybody's input. We'll start with Counsel.

10 MR. SOLOMON: Yes. Mark Solomon and Jeff Luszeck,
11 on behalf of the ELN Trust.

12 MS. FORSBERG: Good afternoon, Your Honor, Rhonda
13 Forsberg, 9557, on behalf of Eric Nelson.

14 THE COURT: Good to see you again, Mr. Nelson, as
15 well.

16 MR. DICKERSON: Good morning -- or afternoon. Bob
17 Dickerson. My bar number is 0945, on behalf of Lynita Nelson,
18 who's also present. Also representing Ms. Nelson are
19 attorneys Katherine Provost, bar number 8414, and Josef
20 Karacsonyi, bar number 10634. And also present in the
21 courtroom is Melissa Attanasio.

22 THE COURT: Good to see you as well, Ms. Nelson.

23 This Court put that on to talk to the parties and
24 explain where I'm going with this case and get this matter

1 fast tracked. I have read all the briefings and did a little
2 research and a little thinking about the case, and I want to
3 kind of go through some notes I wrote down, then we'll hear
4 from the parties on that. We'll go on that -- number one, we
5 need to get this matter resolved, it's been pending forever.
6 I mean, it just seems like a lifetime for both of you.

7 There was also another matter that was raised. I
8 put you on notice about Kathleen Bergquist and submitted a
9 letter to the Court and I haven't read it, but my law clerk
10 read it. And it said that everybody was cc'd on it,
11 indicating that she wanted to be removed as the parenting
12 coordinator saying that basically things were not working out
13 and some things about, without pointing fingers, that just --
14 she just could not work on that as Ms. Nelson wasn't engaged.
15 She was trying to take control or somebody should go get the
16 exact letter for you it would do on that. But that's an issue
17 as to parenting coordinator, so we'll -- did you guys get --
18 did everybody get a copy of that letter?

19 MS. FORSBERG: We did not, Your Honor.

20 THE COURT: No? Okay. I'll have my law clerk make
21 copies because he just kind of summarized it to me, sent me a
22 little email. And I said, well I'm not sure if everybody's
23 read it. I wanted to make sure everybody's had proper notice
24 before we take care of that.

1 But as far as the case here I looked at the
2 jurisdiction issues to see what issues I would be comfortable
3 hearing. We had talked about it with the part 4 of the Eighth
4 District Court Rules with respect to probate trust,
5 administration of estates and the rules that apply under 164
6 of Title 13 of the NRS; 4.16 Eighth District Court Rule talked
7 about any contested matters pertaining to probate or trust and
8 administration of trust should be assigned on a random basis
9 to a civil trial judge other than the Family Court judge.

10 I did look at that matter. (Indiscernible) Landreth
11 I think addressed those matches the fact that the Family Court
12 judge does not lack authority to resolve cases merely because
13 it involves subject matter outside of NRS 3.223. As you're
14 aware of NRS 3.223 lists the parameters of the proceedings
15 which are under the original exclusive jurisdiction of the
16 Family Court. Landreth was very clear saying that basically
17 the Constitution of the Nevada Constitution Article 6, Section
18 6, talks about the language of the District Court and the
19 courts and that the Nevada legislatures do not have authority
20 to limit the District Court judge's jurisdiction by
21 legislative order or rule.

22 It made it real clear that under the NRS 3.223 that
23 it does not limit, quote, the Constitution of power and
24 authority provided under Article 6, Section 1, to a District

1 judge sitting in Family Court. What they said is Family Court
2 judges, contrary to popular belief, are real judges, are real
3 District judges, and have the jurisdiction of the Constitution
4 and despite legislator or attorneys to the other way, we are
5 real District Court judges and have that jurisdiction.

6 So I think Landreth made it clear. And we'll note
7 that the Eighth Court District Rule 4.16 was talked about
8 other than a trial judge sitting in Family Court was enacted
9 May 2004. Landreth is seven years later. So I think Landreth
10 addressed that very clearly on that, so this Court does
11 believe it does have jurisdiction to entertain actions on
12 trust or administration of estates if it so chooses or would
13 be appropriate.

14 The question I had after that is when I looked at
15 the 164 under Titles 12 and 13 of NRS, I think it's clear that
16 when you looked at those rules in 164.05 which provides under
17 the trust, the Court has exclusive original jurisdiction of
18 proceedings initiated by a petition of an interested person
19 concerning the internal affairs of a non-testamentary trust.
20 It went on to talk about a definition of the Court under
21 132.116 which says, the Court means a District Court of this
22 state sitting in probate or otherwise adjudicating matters
23 pursuant to this title. So that would mean this wasn't
24 limited as it said that one had jurisdiction when it says that

1 sitting in probate or otherwise adjudicating matters.

2 So I think when I read that in conjunction it's not
3 exclusive just to a probate or to a civil judge hearing that
4 one. I put that in conjunction with Landreth and those
5 issues. So I think the Court can have the jurisdiction. The
6 issue is how much do I want to hear or what would be the best
7 way if we have different focuses. So when I looked at that I
8 felt the Court does have jurisdiction and that basically the
9 judicial power derives from the Nevada Constitution and the
10 legislative local rule and NRS 3.223 and the Eighth District
11 Court rule I do not think can take away the Court's judicial
12 power from the Nevada Constitution. So I do believe that this
13 Court has the authority.

14 The other issue came up that was raised as to
15 jurisdiction was the Barelli case in which the Nevada Supreme
16 Court held that a Family Court has jurisdiction to resolve
17 issues falling outside of its jurisdiction that, where
18 necessary, for the resolution of claims related to the divorce
19 or had proper authority. And that's kind of what I'm looking
20 at. What do I need to resolve to get the property matters
21 resolved for this couple. And what I don't need to resolve,
22 I'm not going to resolve. I'll leave that for other courts on
23 that. So that's kind of the issues as to what I was looking
24 at from the jurisdiction is that what issues as to the trust

1 do I need to hear in order to resolve this divorce and the
2 property issues under Barelli. So that's kind of what I was
3 looking at to try to get this case done.

4 I'm hesitant, to be quite honest, to get into all
5 the tort claims. The reason for that because torts and
6 divorce court have whole different functions. Divorce court
7 is an equity court due to what's fair and just under the
8 parties, get them divorced, custody, those issues and
9 property. A tort has a whole different focus. A tort is to
10 provide damages for a party that's been harmed by someone's
11 wrongful conduct, and some of the torts are asking for
12 punitive damages and right for juries to determine that.

13 So I'm hesitant to get into tort actions because I
14 don't think that -- I think when you put tort actions in a
15 divorce case it makes it -- it makes it very complicated,
16 drags it out, lot more people involved. And to me when you
17 look at it, many states have ruled on DV torts between
18 divorces. So they even hear DV torts between the parties
19 through a divorce. Most courts have not simply because it
20 clouds the water, it makes it muddy, drags it on forever and
21 they got two different purposes.

22 Tort is to provide damages for somebody that have
23 been wrong. Divorce is an equity court to get people divorced
24 and divide property fairly and equitable. So there's two

1 different focuses on that. So most courts do keep them
2 separate. While I think Nevada has not really stated a
3 position, I believe in Nevada you could hear them. If the
4 Court chose to, the Court could hear the tort. But other
5 states says it's probably not wise to do that, but the issue
6 is what do I want to hear and I think would be beneficial in
7 order to get this case resolved. And what I don't need to
8 hear, you can litigate somewhere else on the damages. So
9 that's the issue before this Court as far as jurisdiction.

10 I looked at the claims 1 through 15, the alter ego
11 claim. While I think the defense -- or I should say the
12 defense I think that Ms. Nelson will have a difficult time
13 with the alter ego because it's different with spendthrift
14 trusts. I do not believe you look at the alter ego or the
15 piercing the corporate veil like you would do under NRS 78
16 corporations. I think it's a whole different criteria you
17 look at.

18 The reason for that is the spendthrift trust is set
19 up a whole different way and a person can be a trustee. And
20 normally when you have the alter ego in corporations, you have
21 different criteria because the entity itself is separate.
22 Here a spendthrift you can be a trustee. You just cannot be
23 the distribution trustee that you determine money comes to you
24 because that's the whole purpose of the spendthrift trust.

1 While I think it's difficult to prove, I think they could have
2 a shot at proving it.

3 I think when you look at it and I don't think you
4 look at NRS 78 as far as determining alter ego claims, I think
5 you look under NRS 163 which talks about alter ego or
6 irrevocable trusts. And 163.4177 talks about factors which
7 must not be considered to be exercised and in proper dominion
8 or control over a trust and it lists those criteria 1 through
9 6 about the beneficiary serving as a trustee and those type of
10 things. So I think those -- that's the appropriate that you
11 look at to determine alter ego, not the corporate alter ego.

12 So can they prove that? They might be able to. So
13 those claims I'd be inclined to hear because I think I found
14 that it was not a property settled trust or that was the alter
15 ego. And I think it ties into the issue about would be the
16 fact of a constructive trust. And that case I found out that
17 it was not, then I think that property could be held as a
18 constructive trust for Ms. Nelson. So that's why I'd be
19 inclined to entertain the alter ego argument because I think
20 it ties in to the community property that I'm trying to
21 resolve.

22 I need to hear about the trust. If it was community
23 property that went in, it stays community property. So the
24 issue is I got to track the property, where it came from and

1 there's been a lot of arguments that it was separate property
2 in. I need to see where the property came from, was it
3 separate property and they can't change it just by saying it's
4 not, same token, Mr. Nelson. If somebody's testimony
5 indicated it was community property, those are things I would
6 hear. Just because he says it's community property doesn't
7 mean it is. But I need to see and determine if it's community
8 or separate property. And then if I do determine -- and part
9 of that would be the trust. If I found that the trust was the
10 alter ego and was not a valid, settled trust, then that goes
11 into issues about property, then it becomes a constructive
12 trust for property distribution.

13 So I think I need to hear the alter ego arguments of
14 claim 1 and 2. And, again, I think it's a different burden
15 they have to look at, not the corporate one because that's the
16 whole purpose of a spendthrift trust because you can be a
17 trustee and you can do that. You just cannot be a
18 distribution trustee as opposed to not have you have the power
19 to get that distribution to yourself. So I think that's the
20 burden you need to look at.

21 As far as those other claims, the tort claims, the
22 breach of fiduciary duties against Eric, claim 3, claim 4,
23 breach of fiduciary duty against Lana and Nola, claim 5,
24 fraud, deceit, intentional misrepresentation of Eric, six,

1 conversion against Eric, Lana, Nola, seven, money that
2 received. It was an alter ego trust, and I think I can
3 incorporate those in 1 and 2 to see if it's alter ego or not.
4 I don't think I need to get in those tort claims. Those are
5 clear tort claims. Eight, fraud and inducement against Eric.
6 Those are tort claims. Unjust enrichment is an equitable
7 claim. I would not be inclined to hear that either, or a
8 breach of an oral contract or to conspiracy or the
9 (indiscernible) action or aiding abetting.

10 So basically the claims I'm inclined to hear is 1,
11 2, 14, the constructive trust and 15, the injunctive relief,
12 because I want to make sure this trust doesn't do anything so
13 the money doesn't disappear till I know what's community
14 property and what's not. I think what's going to happen is
15 some of the testimony that came here that will help determine
16 the nature of that trust. We'll touch on some of those other
17 elements you have. But those are tort claims. Those need to
18 be heard in another court deal with tort, get into all the
19 issues, all the discovery you need.

20 I'm going to get these people divorced, and I'm
21 going to get property depending what happens with the property
22 and maybe resolve those issues as far as the trust. And you
23 may not need those tort actions. If not, you've got the tort
24 actions to go. So I'm going to hear claims 1, 2, 14 and 15.

1 I don't see the need for a lot more discovery. We can talk
2 about what you need because I want this trial going. I'm
3 ready to go. See what you need for discovery. This case has
4 been open for a long time. I heard six days of testimony,
5 mostly on the trust. And now two years later everybody want
6 -- kind of wants a do over. That isn't going to happen.
7 We're going to get this done. These parties are going to be
8 divorced. I'm going to make my findings.

9 The question that I have for you, number one, is the
10 need to file a petition under 164 in order to get in rem
11 jurisdiction over the trust. That's an issue they're
12 challenging from Mr. Nelson that this Court doesn't have
13 jurisdiction. I'm trying to take appealable issues off the
14 table.

15 So I was inclined to have you file the petition
16 under 164 with a motion to have those claims assigned to me
17 under one judge, one family, how it's so closely integrated to
18 what I need to do in order to determine property. And then
19 that way it would give you a chance to argue it to see if the
20 probate commissioner agreed with you. That way you've got
21 that record. And if I don't do that and just say to heck with
22 it, that's going to give you an appealable (indiscernible)
23 afterward.

24 So I'd rather get that out straight down in there

1 and say that and then -- as to that issue when you say, other
2 than a civil judge, if you've got a problem with that, even by
3 our own practice, Judge Pollack is the back up probate judge
4 and he's a Family Court judge. And that came from Chief Judge
5 himself. So I can't believe that they're saying that rule
6 could only be here other -- I think they've done the same
7 thing under Landreth and said, well that was great. Landreth
8 makes it real clear that any judge could hear that, and Judge
9 Pollack is the back up.

10 So I think the issue on that is you file your
11 petition under the 164 probate with a motion, Judge, hear
12 these issues related to the divorce action so I can determine
13 the property settlement and see if they assign them or not.
14 That gives both parties an avenue to get that resolved. I'm
15 not sure if you need to file that petition to be honest
16 because they've joined in this action already. I don't know
17 about the in rem jurisdiction with trusts to be honest, but
18 I'm just trying to take possible issues off the table from
19 that front end.

20 So that's why I hear you argue about -- let you see
21 -- because I imagine no matter what happens, that the way this
22 litigation's going this case may be litigated till I'm just a
23 bad memory in everybody's mind. So I don't think -- I think
24 the way it's been litigated I could see issues going up there.

1 So that was my issue if you need to have the 164 petition to
2 establish in rem jurisdiction over the trust.

3 MR. DICKERSON: And with respect to our claims 1, 2,
4 14 and 15, is that what you're referring to?

5 THE COURT: Yeah.

6 MR. DICKERSON: Okay. Now, even though they have
7 filed their complaint -- that the trust has filed its
8 complaint before this Court and the parties agreed that -- I
9 think we may have a disagreement as to why they were doing,
10 but we stipulated --

11 THE COURT: Yeah.

12 MR. DICKERSON: -- that the trust would in so Your
13 Honor could grant full relief.

14 THE COURT: Right.

15 MR. DICKERSON: As you also know throughout these
16 proceedings, everything has been treated as community property
17 and that was the reason for getting the trust in.

18 THE COURT: Exactly. I mean, I'm okay. I'm just
19 saying I was throwing that out there for the petition just for
20 that issue to talk about it because I can imagine I could see
21 them appealing that after the facts saying, wait a minute, the
22 judge couldn't hear that to begin with because you didn't file
23 the 164 petition. That's the only reason I brought it up to
24 throw it on the table.

1 I felt that we got everybody here. I felt I had the
2 jurisdiction, but I know at the probate they file all those
3 things in front of the probate commissioner who then assigns
4 it to a judge. So that -- I was throwing that out for
5 discussion because what I'm trying to do is take away issues
6 that you don't sit there and they're now going to appeal
7 (indiscernible) on that that they have to file a petition in
8 order to -- under 164 -- was it 164. -- I forgot what it is --
9 015 or something.

10 MR. SOLOMON: 015.

11 THE COURT: Yeah. So that's what I don't know. And
12 that's -- I think they argued. So that was the only thing I
13 had that it might be better safe than sorry to do it just
14 because it takes that issue -- it gives everybody a chance to
15 argue it with a judge other than me who does probate.

16 MR. KARACSONYI: I just think, Your Honor, real
17 briefly, that the petition is just -- it's basically a
18 pleading to initiate an action.

19 THE COURT: Exactly.

20 MR. KARACSONYI: And we've done the same thing here
21 with a counter claim which is a form of pleading.

22 THE COURT: Yeah. I'm okay with that.

23 MR. KARACSONYI: I think our counter claim pretty
24 much is a petition to determine those issues. So I don't even

1 think it needs to be filed.

2 THE COURT: I'm okay with that. I'm just throwing
3 that out there because --

4 MR. KARACSONYI: Okay.

5 THE COURT: -- I could see appealable errors and I
6 didn't know where they were coming from. I could respect
7 that. So I just wanted to throw that out there and --

8 MR. KARACSONYI: We will take a look at it for sure.

9 THE COURT: Yeah. Because I'm oka without it
10 because I felt I had the jurisdiction. I was just looking at
11 the 164 and the argument of counsel and say that might be a
12 better safe than sorry kind of thing. But I felt I had it
13 with the pleadings that got it before me, and it makes it
14 cleaner for me to deal the claims 1, 2, 14 and 15. And then
15 you can do your tort claims with a separate filing down in a
16 civil court or through the probate and then have a civil judge
17 assigned to that for the tort actions because those can take a
18 lot longer.

19 It's going to take a lot more discovery, and you'll
20 probably be in trial for years getting those tort actions
21 done. I'm not going to step in that. That's not going to go.
22 So that's kind of where I was going. That's why I called
23 everybody here to see if that trial date still works, what you
24 really need to do for discovery because we've had discovery

1 here. This case has been open and I think -- as far as those
2 issues from the side, Mr. Nelson, I do have equitable powers.
3 I can make unequal distributions of community property for
4 compelling reasons. So I do have some equity powers which I
5 will use as fair and just under the equity powers, but also
6 will fully apply all the law.

7 I imagine Mr. Nelson will prefer all the trust
8 matters to be heard by a real judge downtown. I can
9 understand that because the last thing we want is have a
10 Family Court judge try to deal anything because we can't get
11 the other thing straight. So I understand that concern. But
12 it needs to be heard by me because this is a divorce. That's
13 where it came in. That's where all this property came. These
14 trusts were set up years after they were married, so I need to
15 follow the money. Just like deep throat, show me the money.
16 See if it's community property. That may resolve the issues.
17 All the other issues may go away if I say it's all community
18 property when it went in. That resolves a lot of issues
19 because as community property he can only give his half. You
20 cannot give your half.

21 So that's where I'm going on and that's why I need
22 to hear some of these other issues with the trust 1, 2, 14 and
23 15. That helps me get to the bottom of constructive trusts.
24 If it is not a valid trust, it gives me other issues with

1 equity. A lot of these other things are going to come out,
2 and we're going to talk about some of the testimony we had
3 about you signing everything at his request and stuff like
4 that. But I think that comes in the Court's equity power.
5 We'll touch on some things about the fairness and equitable
6 issues as far as I do believe a husband or a spouse has a
7 fiduciary duty in general to their spouse to protect community
8 property assets for the best of both parties. So I think it
9 ties in that, leaving out a separate tort action.

10 MR. DICKERSON: Just for clarification, Your Honor.
11 You've mentioned several times that you're not inclined to
12 hear these claims other than 1, 2, 14 and 15, and you've said
13 a couple times, I do not want to hear those. Just for the
14 record then, it's my understanding Your Honor is finding that
15 you do have jurisdiction over those claims, that they do state
16 a claim for relief. However, you have made the determination
17 that you're declining to entertain those claims in this Court.
18 Is that correct?

19 THE COURT: Absolutely. My issue is not the
20 foreclosure or getting the right court to determine all those
21 tort case. They got some issues with statute of limitations
22 that I haven't looked at the merit because it depends on what
23 happens. But I really wasn't going to get into any of those
24 and let them argue it in the proper court and not turn this

1 into the tort case on those issues because I felt those belong
2 in another -- I just want to get these parties divorced and I
3 just need to hear the stuff I need so I can make a
4 determination on the designation of the property and not make
5 any merits as to any of the claims on that. Some of the
6 claims I think they're really stretching. But the issue was
7 to give them the right court to do it in the proper tribunal
8 to raise all those issues in the proper court.

9 MR. SOLOMON: Can I correct one thing --

10 THE COURT: Absolutely.

11 MR. SOLOMON: -- that Mr. Dickerson said?

12 THE COURT: Absolutely.

13 MR. SOLOMON: Because I think it's not what Your
14 Honor said.

15 THE COURT: Okay.

16 MR. SOLOMON: I don't think this Court has made a
17 determination whether those tort claims properly state a claim
18 because you didn't reach the issue.

19 THE COURT: Yeah. I'll be -- yeah. I agree with
20 you. I haven't --

21 MR. DICKERSON: But you're not finding that they do
22 not state a claim.

23 THE COURT: Yeah.

24 MR. SOLOMON: No, he's not reaching it.

1 THE COURT: Yeah, I'm not reaching any merits is
2 what I meant to put on. I'm not making merits as to the
3 validity or the non-validity of those claims. I haven't
4 reached them because I am not touching them. I think you need
5 a fair shot in front of a court on that is dealing just with
6 those tort claims and just those trust claims. I'm just
7 trying to reach the claims I need to try to get the property
8 resolved. And I think I need to hear the alter ego and the
9 injunctive relief and a constructive ties those in to
10 determining the nature of that property and any equitable
11 distribution I need to do.

12 But, yeah, I stand corrected on that just in -- I'm
13 not making any claims as to the merits of claims 3 through 13
14 whether they're valid or not valid. I haven't even determined
15 the merits of those or the lack of merits thereof.

16 MR. SOLOMON: Appreciate that, Your Honor.

17 I know that you're driving ultimately if whether
18 we're going to be ready for trial in May, and the last thing I
19 want to do is delay things. But this did change the
20 complexity of the case somewhat. Not near as complex as it
21 would have been with those other tort claims, but there are
22 some additional discovery that we're going to probably need to
23 do and additional focus we're going to need to do with respect
24 to alter ego.

1 For example -- just by way of example. Yesterday,
2 we took a full day deposition of Jeff Burr. But by agreement
3 between Mr. Dickerson and I we didn't ask the questions that
4 went to alter ego or other matters until this Court had an
5 opportunity to rule today because it would have been a waste
6 of time depending on how the Court ruled. So there will be
7 additional discovery. There may be an additional expert or
8 two with respect to this and certainly there's going to be a
9 little bit different focus with respect to the accounting work
10 we're going to have to do.

11 I don't know if Mr. Dickerson and I should meet and
12 talk about what additional discovery we need to do.

13 THE COURT: Do you think you need more --

14 MR. DICKERSON: No, I think that's important.

15 MR. SOLOMON: I think that's appropriate.

16 THE COURT: Do you need more discovery -- do you
17 agree on your side we need more discovery too or just --

18 MR. DICKERSON: Not a great deal, but I mean, I --
19 listen, I don't want to tell him how to try his case.

20 THE COURT: Right.

21 MR. DICKERSON: He's a very good lawyer and he knows
22 what he's doing. So --

23 THE COURT: I just want to get this done. So I'm
24 not going to let this kick another five months, six months. I

1 want to get it done. I'm ready to go. I want to give a fair
2 shot to everybody to get their things out there so we can have
3 a nice record on that, but I don't want it to drag on. I want
4 to get it done.

5 MR. SOLOMON: And in all honesty I'll make that
6 personal statement here. I have a large vacation -- the
7 largest vacation I've ever taken in my 36-year career starting
8 in March and April and then I have trials that fill up May and
9 the first part of June. Is -- if we don't go in May, are we
10 able to go in perhaps June or July?

11 THE COURT: Yeah, I'll make it happen.

12 MR. SOLOMON: Is that a possibility on the Court's
13 calendar?

14 THE COURT: Yeah, I'll make it happen. We'll just
15 make it happen.

16 MR. DICKERSON: That might be also good also,
17 because quite frankly, as a result of Mr. Burr's deposition
18 yesterday, we do anticipate that we will be filing at least
19 one or more motions, one motion being a motion for summary
20 judgment on some of these issues.

21 THE COURT: Oh, okay.

22 So what trial -- let's go backwards first, see what
23 trial date you think you need and we can give you discovery
24 cutoff days. Do you think realistically you can do it if I

1 gave you a June -- kick it 30 days? Is that -- you think you
2 need 60 days? July? I just want to get it done. I'm not --
3 yeah, because I'm just trying to be realistic so everybody's
4 got a fair chance to get all their stuff --

5 MR. NELSON: Can we take a break so we can figure
6 out some ground rules? This is 25 years of paperwork. We got
7 to cut -- we got to know what we're trying to get.

8 MR. DICKERSON: That has nothing to do with setting
9 the trial date.

10 What works for you, Mark?

11 THE COURT: You guys want to take --

12 MS. FORSBERG: Please, could we take a few minute
13 break, please?

14 THE COURT: You guys want to take a 10 minute recess
15 see what date works good for you and I'll make my schedule
16 work for you guys and we'll get this done.

17 MR. DICKERSON: We can do that right now.

18 THE COURT: All right.

19 MR. DICKERSON: I'm just going to rely on Mark.

20 THE COURT: Okay.

21 MR. DICKERSON: You said you had a vacation planned
22 in June?

23 MR. SOLOMON: No, I have -- it's in April and -- I'm
24 sorry, March and April.

1 THE COURT: March and April.

2 MR. SOLOMON: But then I have immediate trials all
3 the way through the first two weeks of June.

4 MR. DICKERSON: Okay.

5 MR. SOLOMON: One of them was going to be this one.

6 But -- so I was hoping a little time for discovery if we don't
7 go in May in this case.

8 MR. DICKERSON: If late June or July --

9 MR. SOLOMON: Late June, July would even be better.

10 MR. DICKERSON: If it works for him, that's fine.

11 THE COURT: How do we look? Do we got --

12 THE CLERK: The last week of June is the Bar
13 conference. Just so you remember.

14 THE COURT: Okay. So early July works better for
15 you then.

16 Is a week realistic? Could we get it done in a
17 week?

18 MR. DICKERSON: I think so; yes.

19 MR. SOLOMON: I would hope so.

20 THE COURT: Okay.

21 (THE COURT AND THE CLERK TALK AMONGST THEMSELVES.)

22 July 9th. Week of July 9th. Then I'll --

23 MS. FORSBERG: What date are we looking at?

24 THE COURT: -- dig up some backup dates.

1 July 9th. It's the week of July 9th, that whole
2 week which is 9th, 10th, 11th, 12th, 13th. But the 13th may
3 not work for --

4 MR. DICKERSON: Friday the 13th. What a great day
5 to be in court. Yes, that works.

6 THE COURT: Yeah, the 13th might not -- July 9th --
7 let me check my thing. I know the -- let me check that real
8 quick for a second.

9 MR. DICKERSON: Judge, is there a chance -- hold on
10 one second, please.

11 THE COURT: Sure.

12 MR. DICKERSON: Judge, here is what our issue is.
13 That week their daughter -- the week of the 9th their daughter
14 has a class that is out of town and Lynita was going to be
15 going with her that week for the class.

16 (THE COURT AND THE CLERK TALK AMONGST THEMSELVES.)

17 MR. NELSON: Your Honor, with all respect with my
18 children, this divorce is so much more important than a class
19 in -- at BYU or volleyball camp. I would ask you to issue it
20 as soon as possible.

21 MR. DICKERSON: Well we're ready tomorrow, Your
22 Honor. If that's what he wants, we're ready tomorrow, and his
23 counsel can explain to him why he needs the time.

24 THE COURT: So you prefer July 16th so you can go to

1 the camp out? A week isn't going to matter.

2 MR. DICKERSON: July 16th you're talking about?

3 THE COURT: A week isn't going to matter. If we're
4 doing July 9th or that, I'd rather get it done in May. But
5 that's not fair if they need more time.

6 Does that work for you? We do July 16th -- I think
7 the 20th won't work for me. I can give you the 23rd and 24th.
8 I gave you the 16th, 17th, 18th and 19th. The 20th I can't,
9 but I can give you that Monday and Tuesday following, 23rd and
10 24th. I hate to break it up, but I could --

11 MR. DICKERSON: That's perfect.

12 MR. SOLOMON: That's fine, Your Honor.

13 THE COURT: That gives you six days.

14 MR. SOLOMON: That works.

15 THE COURT: Does that work?

16 MR. DICKERSON: Yeah, perfect.

17 THE COURT: Okay. Can we close that up? So it
18 would be July 16th, 17th, 18th, 19th and then the 23rd and
19 24th. Yeah, because I have a conference on that. I'm giving
20 a lecture on -- okay.

21 As far as cutoffs, can you guys do your own
22 discovery cutoffs? You need it from me as far as depositions
23 or experts.

24 MR. SOLOMON: I think I can work that out --

1 THE COURT: Can you guys work that out?

2 MR. SOLOMON: We can work it out together, Your
3 Honor.

4 THE COURT: Can you work that out, Mr. Dickerson --

5 MR. DICKERSON: Yes, absolutely.

6 THE COURT: -- as far as your scheduling? Because
7 if not the Court will be glad to give you a scheduling order.

8 MR. DICKERSON: Absolutely. We can do that.

9 THE COURT: And we're going to go on July 16th.
10 Even if everybody dies I'm going. All right. I want to get
11 this done. I want to give everybody a fair chance to get
12 their information. And, again, I'm going to --

13 MR. DICKERSON: Each begin at 9:00 a.m.?

14 THE COURT: Yeah. And then as far as -- do you want
15 to make an order from today's thing so it's real clear? Did
16 you want to draft that order, Mr. Dickerson, and share it with
17 Counsel to make sure sign off --

18 MR. SOLOMON: Can I have -- I'll sign off on that?

19 THE COURT: Yeah. Absolutely. Share with all the
20 attorneys just so everybody can sign off on it if there's any
21 disagreement.

22 -- The bottom line is basically I'm hearing claims 1
23 and 2 and 14 and 15 from those claims. As to claims 3 through
24 13 I'm not making any determination as to the merits or their

1 lack of merit to those cases. I really haven't reached them.
2 And that way they can take that up in the appropriate
3 tribunal, and I made my findings as to jurisdiction, why I
4 think I have the jurisdictions. And I'm really trying to hear
5 those matters relating to the trust and that I think that are
6 necessary for me in order to reach the ultimate determination
7 as to property distribution. And that's why I'm hearing those
8 claims.

9 MR. SOLOMON: Understood, Your Honor. Thank you.

10 THE COURT: Anything else?

11 Did you want a deal with the --

12 MS. ATTANASIO: Parenting coordinator?

13 THE COURT: -- parenting coordinator? Do you guys
14 want to look at that? Did you --

15 MS. FORSBERG: (Indiscernible) letter.

16 MR. NELSON: Well this -- if we can assign one.
17 It's very important because we get nothing done, no calendars,
18 nothing works without a parent coordinator.

19 THE COURT: Yeah.

20 MS. ATTANASIO: I believe both parties agree that a
21 parenting coordinator is necessary. I think what might assist
22 is -- I believe you -- your order was pretty specific last
23 time. Yet part of the problem is that they still -- between
24 the two of them we're asking the parenting coordinator both

1 sides to do things that weren't in the order. And then the
2 parenting coordinator kind of said, well that's not really
3 what I'm supposed to do. So I don't know if it's maybe if Ms.
4 Forsberg and I can discuss parameters for the parenting
5 coordinator.

6 THE COURT: Do you have the old order that I gave?

7 MS. FORSBERG: No, Your Honor.

8 MS. ATTANASIO: We would build from the old order
9 and see what else we could agree to.

10 MS. FORSBERG: We couldn't even get a calendar, Your
11 Honor. I mean --

12 MS. ATTANASIO: There were issues with the calendar
13 on both sides, Your Honor. And as for a -- as for whom I do
14 recall that Eric wanted a female the last time if that's still
15 his position.

16 THE COURT: You want a female and you guys wanted a
17 Ph.D. That's how I remembered it.

18 MS. FORSBERG: Yes, we want the same thing, Your
19 Honor.

20 MS. ATTANASIO: We would again -- we would again ask
21 for Dr. Alegis (ph) because of --

22 MS. FORSBERG: No, we --

23 MS. ATTANASIO: -- the success that we have seen in
24 high conflict divorce actions with him. If Your Honor doesn't

1 feel that a male is appropriate and wants to have a female,
2 then we would --

3 MS. FORSBERG: About the same parameters --

4 MS. ATTANASIO: We would ask for Deborah Roberts
5 (ph) .

6 MR. DICKERSON: Instead of all of us yelling and
7 screaming at the same time, we'd just -- our side, whoever you
8 pick, our preference would be a male. And I think --

9 THE COURT: Okay. And you --

10 MR. DICKERSON: And I think you know the reason why.

11 THE COURT: Yeah. Okay. Do you guys want to sit
12 there and go through lists or do you want me just to pick one?
13 Do you guys want to come up with a proposed stipulation or do
14 you want me to look at that order? You guys want to look at
15 that order and submit a proposed -- and this David Blake (ph)
16 and I will give you the -- and I will give you the parenting
17 coordinator.

18 So do you guys want to look at the order and modify
19 it between the two?

20 MS. FORSBERG: No, we're fine with you just picking
21 it. And -- but we want to stick with the same parameters you
22 had before. It was a woman and a Ph.D. That's all we're
23 asking, for the same parameters you went with just because she
24 -- you know --

1 MR. DICKERSON: May we suggest.

2 MS. FORSBERG: -- (indiscernible) last time.

3 MR. DICKERSON: If you would appoint the parenting
4 coordinator and if we could provide you with alternative
5 orders with respect to the parameters and you pick which one
6 you prefer.

7 THE COURT: Okay. And I'm --

8 MS. FORSBERG: We don't want it to take forever.
9 That's our concern is --

10 THE COURT: I'll get it to you tomorrow. I'll talk
11 to Judge Elliott who came out of that and tell them who she
12 thinks on the approved list is the top and tell her a high
13 conflict case that we've already chewed up one that didn't
14 make it on that. Somebody already chewed up Bergquist, so I
15 said who's next in line on that that has got a strong enough
16 personality to handle both parties to get in there, because --

17 MS. FORSBERG: I trust Elliott's judgment, Your
18 Honor.

19 THE COURT: Okay. Absolutely. I'll talk to her when
20 I see her on that.

21 MS. FORSBERG: Over Mr. Dickerson's.

22 THE COURT: So it may take me a day or two to track
23 her down because -- but once I see her on that I'll give the
24 approved list and have her give me a couple suggestions when I

1 explain without giving her details. I need someone that's
2 very strong willed that can get this case moving.

3 MS. ATTANASIO: Thank you, Your Honor.

4 MS. FORSBERG: I believe she's going to be the judge
5 that hears the -- this matter next, Your Honor.

6 THE COURT: What's that?

7 MS. FORSBERG: I believe she's assigned as the judge
8 that's going to hear this -- that's already -- you know how it
9 was moved to the other department. That is the department so
10 the Court's aware.

11 THE COURT: Oh, that's probably not good.

12 MS. FORSBERG: I didn't know if that's a problem for
13 you.

14 THE COURT: Yeah, that probably causes a problem on
15 that.

16 MS. FORSBERG: I didn't want to --

17 THE COURT: I'll look at that list --

18 MS. FORSBERG: -- run into that conflict.

19 THE COURT: -- and talk to another judge just in
20 case she inherits this case or --

21 MS. FORSBERG: She does --

22 THE COURT: -- stays with me forever.

23 MS. FORSBERG: -- according to the calendar. So --

24 THE COURT: That it? All right. That wouldn't be

1 proper then because I don't want to --

2 MS. FORSBERG: Okay. Just to --

3 THE COURT: But I'll check with the other judges
4 there. They've been doing it and look at my list and see if
5 they give me some direction. And then as you -- what I'll do
6 is I'll just do an order.

7 Do you want to use the same order? Did you guys
8 want to look at the proposed order? Is that the last thing I
9 heard you guys (indiscernible) an order to me and I'll just
10 send -- I'll have my law clerk give you guys the name with the
11 contact information. And you can incorporate it into the
12 order.

13 MR. DICKERSON: That'd be great.

14 THE COURT: Okay.

15 We'll get that done for you. If not, tomorrow we
16 head down for you first thing Monday.

17 MS. FORSBERG: Thank you, Your Honor.

18 THE COURT: Thanks, everybody.

19 MR. KARACSONYI: Thank you.

20 MS. ATTANASIO: Thank you, Your Honor.

21

22 (PROCEEDINGS CONCLUDED AT 15:39:55)

23 * * * * *

24

1 ATTEST: I do hereby certify that I have truly and
2 correctly transcribed the digital proceedings in the
3 above-entitled case to the best of my ability.

4 /s/ Kimberly McCright
5 Kimberly McCright, CET
6 Certified Electronic Transcriber
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2/28/12 D

1 **NOTC**

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7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

9 ERIC L. NELSON,

10 Plaintiff,

11 v.

12 LYNITA SUE NELSON,

13 Defendant.

Case No. D-09-411537-D
Dept. O

**NOTICE OF FILING AMENDMENT TO
SOURCE AND APPLICATION OF FUNDS
FOR ERIC L. NELSON NEVADA TRUST**

15 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
16 L. BERTSCH, CPA & ASSOCIATES, file the Amendment to Source and Application of Funds for
17 Eric L. Nelson Nevada Trust, a copy of which is attached as **Exhibit "A."**

18 DATED this 27 day of February, 2012.

19 **LARRY L. BERTSCH CPA & ASSOCIATES**

20 

21 Larry L. Bertsch, CPA, CFF
22 Nicholas S. Miller, CFE
23 265 East Warm Springs Rd., Suite 104
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25 *Forensic Accountants*


1 **CERTIFICATE OF SERVICE**

2 I certify that on the 27 day of February, 2012, I mailed a copy of the foregoing **NOTICE**
3 **OF FILING AMENDMENT TO SOURCE AND APPLICATION OF FUNDS FOR ERIC L.**
4 **NELSON NEVADA TRUST** to the following at their last known address, by depositing the same in
5 the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

6 Rhonda K. Forsberg, Esq.
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12 *Trust*

13
14
15 
16 An employee of Larry L. Bertsch, CPA & Associates

Amendment to
Source and Application of Funds
For
Eric L. Nelson Nevada Trust

From January 1, 2009 through May 31, 2011

District Court Family Division

Clark County, Nevada

Case Number: D-09-411537-D

Department O

Original Report filed on December 8, 2011

Amended Report Date: February 27, 2012

Prepared by:

Larry L. Bertsch, CPA, CFF

&

Nicholas Miller, CFE, CSAR, MBA

On December 8, 2011, Larry L. Bertsch and Nicholas Miller, filed a *Notice Of Filing Source And Application Of Funds For Eric L. Nelson Nevada Trust* in District Court, Clark County, Nevada Case No. D-09-411537-D Dept. O. Pursuant to the filing, we received subsequent information relating to adjustments needing to be made to the initial filing. We submit the following report to serve as an amendment to the December 8, 2011 filing:

Amended Source & Application of Funds Chart

The following chart is explains the various adjustments made to the accounts in the initial report.

Sources of Cash	Initial	Adjusted	Change	Page Ref
Beginning Cash/Equivalents	2,767,381.07	2,767,381.07	-	
Affiliated Companies	638,300.00	638,300.00	-	
Related Individuals	615,121.34	44,930.06	(570,191.28)	2-4
C.D. Redemption	2,504,535.34	2,504,535.34	-	4
Sale of Real Property	216,598.96	216,598.96	-	
Other Income	1,802,529.11	1,816,767.10	14,237.99	4
Rental Income	159,343.59	159,343.59	-	
Interest Income	117,809.82	123,763.11	5,953.29	4
Refunds	110,597.52	110,597.52	-	
Line of Credit	2,442,368.17	2,442,368.17	-	5-6
Total Sources	<u>11,374,584.92</u>	<u>10,824,584.92</u>	<u>(550,000.00)</u>	
Applications of Cash				
Eric Nelson	1,334,231.36	284,231.36	(1,050,000.00)	7-12
Lynita Nelson	42,180.00	42,180.00	-	
Children Payments	206,848.69	206,848.69	-	
Related Individuals	1,433,287.00	1,433,287.00	-	13-17
Investments	2,386,465.87	2,386,465.87	-	
Mellon Investment Account		850,000.00	850,000.00	7
Line of Credit	2,972,731.58	2,222,731.58	(750,000.00)	7
Professionals	29,186.68	29,186.68	-	
Intercompany	2,545,295.35	2,845,295.35	300,000.00	9
Rental Expenses	216,861.16	216,861.16	-	
Operating Expenses	10,820.95	10,820.95	-	
Other Individuals	29,479.80	129,479.80	100,000.00	8
Other Companies	152,075.22	152,075.22	-	
Ending Cash Balance	15,121.26	15,121.26	-	
Total Applications	<u>11,374,584.92</u>	<u>10,824,584.92</u>	<u>(550,000.00)</u>	

The initial report as well as these adjustments comes from the Peachtree Files obtained from Eric Nelson. Bank accounts not tracked in Peachtree files for ELN NV may not be reflected accurately within this report. As a result, we reserve the right to issue a supplemental Source and Application of funds for any bank account not tracked in the Peachtree Files provided by Eric Nelson.

Page 7: (C) (d) Eric Nelson (Personal)

Original Filing: Report indicates a deposit from Eric Nelson on 07/15/09 for \$500,000.00

Eric's Response: In a document provided by Rochelle McGowan ("McGowan"), an employee of Eric Nelson, on January 25, 2012, she explains, "this was a payoff of the Mellon LOC". According to the BNY Mellon documents, as of 6/29/09, the Line of Credit ("LOC") had a balance of \$500,000.00. As of 6/30/09, the LOC balance was reduced to \$300,000.00. On 8/1/09, the LOC balance was \$0.00. According to the BNY Mellon Investment statements, on 7/30/09, \$300,483.33 was paid to the Bank of New York Mellon.

Corrected: According to the documents provided, the \$500,000.00 transaction originally listed as a contribution for Eric Nelson on 7/15/09 was a combination of three (3) payments against the line of credit. Therefore, this transaction should be removed from the report as a contribution by Eric Nelson.

Original Filing: Report indicates a deposit from Eric Nelson on 11/03/09 for \$10,000.00

Eric's Response: According to the Bank of America records produced by McGowan on January 25, 2012, on 11/03/09, \$10,000.00 was transferred from the Eric L Nelson Nevada Trust Bank of America Money Market Savings account ending in #4118 to the Eric L. Nelson NV Trust DBA Nelson and Associates Eric L Nelson Trustee Bank of America account ending in #2798.

Corrected: According to the documents provided, the \$10,000.00 transaction was not a contribution by Eric Nelson. The transaction was from an ELN NV account that was not recorded in the ELN NV Peachtree file, thus it shall be removed from Eric's deposits.

Original Filing: Report indicates a deposit from Eric Nelson on 12/02/09 for \$10,000.00

Eric's Response: According to the Bank of America records produced by McGowan on January 25, 2012, on 12/02/09, \$10,000.00 was transferred from the Eric L Nelson Nevada Trust Bank of America Money Market Savings account ending in #4118 to the Eric L. Nelson NV Trust DBA Nelson and Associates Eric L Nelson Trustee Bank of America account ending in #2798.

Corrected: According to the documents provided, the \$10,000.00 transaction was not a contribution by Eric Nelson. The transaction was from an ELN NV account that was not recorded in the ELN NV Peachtree file, thus it shall be removed from Eric's deposits.

Original Filing: Report indicates a deposit from Eric Nelson on 01/01/10 for \$35,953.29

Eric's Response: According to the Bank of America records produced by McGowan on January 25, 2012, \$35,953.29 was transferred on 01/01/10, onto the books of Eric L Nelson NV Trust. On 02/01/10 and 02/03/10, \$10,000.00 and \$25,995.30 respectively, was transferred from the Eric L Nelson Nevada Trust Bank of America Money Market Savings account ending in #4118 to the Eric L. Nelson NV Trust DBA Nelson and Associates Eric L Nelson Trustee Bank of America account ending in #2798.

Corrected: According to the documents provided, the \$35,953.29 transaction was not a contribution by Eric Nelson. The transaction was from an ELN NV account that was not recorded in the ELN NV Peachtree file, thus it shall be removed from Eric's deposits.

Original Filing: Report indicates a deposit from Eric Nelson on 03/15/10 for \$14,237.99 ,

Eric's Response: According to the Bank of America records produced by McGowan on January 25, 2012, on 03/15/10, \$14,237.99 was transferred from the Eric L Nelson TTEE Eric L Nelson Nevada Trust U/A 5/30/01 Bank of America Merrill Lynch Investment account ending in #4354 to the Eric L. Nelson NV Trust DBA Nelson and Associates Eric L Nelson Trustee Bank of America account ending in #2798.

Corrected: According to the documents provided, the \$14,237.99 transaction was not a contribution by Eric Nelson. The transaction was from an ELN NV account that was not recorded in the ELN NV Peachtree file, thus it shall be removed from Eric's deposits and is classified as other income.

Page 7: (D) C.D. Redemption

Original Filing: In 2009, ELN NV received \$2,504,535.34 from the redemption of Certificate of Deposits (C.D.). The entries were recorded as Eric Nelson Capital Contribution.

Eric's Response: According to the records produced by McGowan on January 25, 2012, McGowan noted "the CD redemption was not to Eric Nelson personally it was in the name of the Trust"

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes.

Page 9: (H)(a) Bank Interest

Original Filing: The original report indicated interest income of \$12,859.72.

Eric's Response: According to the records produced by McGowan on January 25, 2012, on February 1, 2010 and February 3, 2010, \$10,000.00 and \$25,995.30 was transferred from the Eric L Nelson NV Trust DBA Nelson and Associates Eric L Nelson Trustee Bank of America account ending in 4118. In addition, this bank account was not recorded in the Peachtree files until January 2010.

Corrected: As this account was not recorded in the Peachtree files until January 2010, \$5,953.29 in interest was not previously recorded.

Page 10: (J) Line of Credit

Original Filing: ELN NV received \$20,000.00 a month from the line of credit with Mellon Bank.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "the \$20,000.00 a month came from the investment account deposited the ELN Trust N&A business account". In addition, she explains that, "the line of credit is the borrowed funds against that Investment account used as collateral."

Corrected: As stated by McGowan, the \$20,000.00 payments came from the BNY Mellon Investment Account and not the Line of Credit. (See note on page 6 of this report for a description of the Investment Account and Line of Credit)

Original Filing: In January 2009, ELN NV received an additional \$100,000 withdrawal.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains: "The \$100,000 on 1/09 was borrowed monies from the Line of Credit to the N&A business account not a draw. It was \$ owed back to the bank".

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes. (See note on page 6 of this report for a description of the Investment Account and Line of Credit)

Original Filing: In April 2009, ELN NV received an additional \$500,000 withdrawal which was paid back to the line of credit the same month.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains: "The \$500,000 on 4/09 was also borrowed funds against the Line of Credit deposited to the N&A account".

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes. (See note on page 6 of this report for a description of the Investment Account and Line of Credit)

Original Filing: On January 29, 2010, \$1,882,368.17 was drawn against the Line of Credit for the following: \$620,000.00 to Banone, \$742,368.17 to "Chicago Title for Cal Nelson" and \$520,000.00 to "City National Bank for Cal Nelson". The payment of \$620,000 to Banone is accounted for on Banone's report as a deposit from the Line of credit therefore the transaction has been removed from this report.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "\$620,000 was also borrowed funds. \$742,368.17 & \$520,000 were borrowed and are part of The Russell Road transaction in ENA."

No Change: There is no change to the original report, thus we have included McGowan's statement for informational purposes. (See note on page 6 of this report for a description of the Investment Account and Line of Credit)

Note: The Investment Account includes all of the investments for the ELN NV Trust while the Line of Credit is the borrowing instrument which collateralizes the investments within the Investment Account.

Page 11: (K) Eric Nelson

Original Filing: In January 2009, the original books and records of ELN NV, produced by Eric Nelson, recorded a \$100,000.00 transaction in Eric Nelson draws with an explanation of "Eric Nelson - transfer to Mellon account".

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Monies to Mellon Investment account are booked as draws as that account is not tracked in Peachtree". According to the BNY Mellon Investment Account statements produced by Lana Martin on February 2, 2012, \$100,000.00 was deposited into the Investment account on 1/16/09.

Corrected: According to the subsequent documents produced, the initial report should be adjusted to remove the \$100,000.00 transaction from Eric Nelson Draws as the money was deposited into the BNY Mellon Investment Account.

Original Filing: In February 2009, the original books and records of ELN NV recorded a \$500,000.00 transaction in Eric Nelson draws with an explanation of "MELLON BANK N.A. - TRANSFER TO MELLON".

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Monies to Mellon Investment account are booked as draws as that account is not tracked in Peachtree". According to the BNY Mellon Investment Account statements produced by Lana Martin on February 2, 2012, \$500,000.00 was deposited into the Investment account on 2/6/09.

Corrected: According to the subsequent documents produced, the initial report should be adjusted to remove the \$500,000.00 transaction from Eric Nelson Draws as the money was deposited into the BNY Mellon Investment Account.

Original Filing: In April 2009, the original books and records of ELN NV recorded a \$100,000.00 transaction in Eric Nelson draws with an explanation of "Draw to Steve Bieri for Hideaway".

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Interest pymnt (*sic*) to Steve Bieri (Lender) for Hideaway Casino project – Booked as a draw on ELN TR books because it was not it's expense. Hideaway took as its expense. **B/U: See Wire receipt to Bieri's company**". McGowan also produced a copy of a Bank of America document indicating a wire to The Stephen A Bieri Company on April 7, 2009 for \$100,000.00.

On January 30, 2012, Lana Martin produced two letters from The Stephen A Bieri, Inc., a California corporation, as manager of Greenville Entertainment LLC, a Delaware limited liability company, dated August 27, 2009, to the Hideaway Casino, LLC, Eric Nelson: Manager. The first letter is in regards to a Note from Greenville Entertainment LLC to Hideaway Casino LL (*sic*). The second letter is in regards to a Notice to Pay.

In addition to the two letters, Lana Martin also produced a copy of a Secured Promissory Note and Security Agreement. The agreement is dated September 30, 2007 and is between Hideaway Casino LLC ("Borrower") and Greenville Entertainment LLC ("Lender"). The note indicates a principal sum of Five Million Dollars (\$5,000,000.00) with an interest rate of 12% annum. A copy of said Secured Promissory Note and Security Agreement is attached to this amendment as **EXHIBIT A**.

Corrected: The original report should be corrected to reflect the April 7, 2009 payment of \$100,000.00 to Steve Bieri as a payment to Steve Bieri and not a draw from Eric Nelson's. In addition, we did not receive documentation evidencing that Steve Bieri or an entity owned by him received a 1099 for the \$100,000.00 "interest payment".

Original Filing: In June 2009, the original books and records of ELN NV recorded a \$350,000.00 transaction in Eric Nelson draws with an explanation of "close cd".

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "Monies from the Close CD Account were transferred to acct #4215 see Exh 7D Ref #5: part of the \$2 mil CD Acct".

On February 14, 2012, Joe Leauanae of Anthem Forensics provided our offices with a copy of the Eric Nelson Eric L Nelson Nevada Trust Bank of America account ending in #4118. According to the June 2009 statement, on June 19, 2009, the account received \$354,877.49 from "NV . CD Redemption Fdes Nnc 002571 NbrPf".

Corrected: According to the documents produced, the \$350,000.00 transaction initially recorded as Eric Nelson Draws as the money was deposited into the Bank of America account ending in #4118. The transaction was from an ELN NV account that was not recorded in the ELN NV Peachtree file at the time of the transaction.

According to the Bank of America Bank statement, on September 4, 2009, \$300,000.00 of the original \$354,877.49 was withdrawn and recorded on the books of Banone, LLC as "CC 3247928-3247945 for Keith for Trustee Sales - Eric took from his BofA acct".

In addition, the remaining \$54,877.49 was eventually transferred to a bank account that was recorded in the ELN NV Peachtree file as follows:

Date	Amount	Destination
09/04/09	(300,000.00)	Banone, LLC Cashier's Checks
11/03/09	(10,000.00)	ELN NV BofA account 2798
12/02/09	(10,000.00)	ELN NV BofA account 2798
02/01/10	(10,000.00)	ELN NV BofA account 2798
02/03/10	(25,995.30)	ELN NV BofA account 2798
	(355,995.30)	

As the Bank of America account #4118 was not recorded in the Peachtree books, the interest earned from June 2009 through February 2010 is added to the Interest Income section of this report.

Original Filing: In March 2010, Eric Nelson had draws totaling \$46,123.47.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "\$30,123.47 – Ameriprise acct was closed. This was Garrett's stock account. Ck was signed over & given to Lynita at the mediation hearing in April 2010 for Garrett. Her atty, Judge, & professionals, Lana & myself were all present to witness it. Booked as a draw to offset the account to close out... this was not a draw by Eric. Ask Lynita where the check is as it was supposed to be setup in an account for Garrett by her."

Update: On February 1, 2012, Nicholas Miller ("Miller") sent Lynita Nelson an email relating to the following: "Can you assist me with information relating to a \$30,123.47 check from an Ameriprise account for Garrett. DO you have any information relating to its whereabouts?"

On February 1, 2012, Lynita responded with the following: "Eric set up an investment account. Saying it was for him and Garrett to invest together. During the process of the divorce he closed the account and signed the ck over to me during a settlement meeting. I kept the check until I had further instruction as to what to do with it. At another meeting where we were all present, (I think another settlement meeting) the check was brought up and it came out that he had cashed the check. Beings I had the original check. He would have had to go to the bank and have them re-issue the check. He told us with that money he bought Garrett's car which was approx. \$26,000."

Corrected: Per the conflicting statements between the parties, without further documentation, we cannot determine the final position relating to the funds.

Original Filing: In September 2010, Eric Nelson had draws totaling 27,000.00.

Eric's Response: In a document provided by McGowan on January 25, 2012, she explains, "2 draws (8000/5000) (2 misc sams club chgs (*sic*) w/Atm card)".

Corrected: According to the original books and records of ELN NV, in September 2010, Eric received the following disbursements.

Date	Name	Amount
09/03/10	Eric Nelson	8,000.00
09/07/10	Eric Nelson	5,000.00
09/07/10	Sam's Club	473.38
09/07/10	Sam's Club	539.42
09/07/10	Eric Nelson	14,000.00
		<u>28,012.80</u>

As reported in the first report, Eric Nelson had draws of \$27,000.00 which consisted of (\$8,000.00; \$5,000.00 and \$14,000.00). The Sam's Club charges were booked as a personal Expense of Eric and never included in his personal expenses. There is no change the original report but offer this as information purposes.

1 THE COURT: Well I'm thinking of going forward on
2 that to continue the cash flow reports as you were doing in
3 your letter of January 26th to keep it going, because you gave
4 me a nice -- some issues that were raised up by Counsel from
5 two years ago about payments to Paul Nelson and Eric T. Nelson
6 and Ryan Nelson. There was the cloud that these were
7 underhanded or not legit and from marital waste, and so you
8 had to address that.

9 So I found this very helpful as far as showing what
10 the 1099's on that to sit there and see at least how much
11 money trades hands and the purpose of that. So I thought it
12 was beneficial in that way.

13 Do you see --

14 MR. DICKERSON: I believe Mr. Birch and what the
15 issue that he's dealing with -- and I don't know the time
16 frame that I have -- I'll let him address it -- is that he's
17 requested certain documents for a continuing -- be able to
18 continue to go through a cash flow analysis and see what's
19 happening. And it's my understanding that he may not have
20 gotten the documents. So he can address that.

21 My preference is I would like this --

22 THE COURT: I'd like to keep it going till we're
23 done --

24 MR. DICKERSON: -- (indiscernible).

1 THE COURT: -- because the testimony is going to
2 come up in waste or property on that. And --

3 MR. SOLOMON: Your Honor, there's one more issue
4 that may be can be addressed at the same time. It is true
5 that there has been some settlement dialogue which I obviously
6 won't go into.

7 THE COURT: Of course I don't want to get into
8 settlement on that.

9 MR. SOLOMON: For The Court. But part of the
10 problem in responding to it is -- I know This Court's gone
11 through great effort to have Mr. Birch sort of be this
12 independent person who can validate what the facts are
13 relative to some of the transactions and the assets, and I
14 think he's done a credible job of doing that and I think all
15 parties agree.

16 What I don't think has been done yet and I don't
17 know why -- and maybe Mr. Birch can address that in response
18 too, is a serious analysis of the liabilities associated with
19 these assets. And I submit that it's imperative that those be
20 addressed also because they obviously -- depending on how The
21 Court rules is going to be integral to get involved. It is a
22 difficult subject, Your Honor, and maybe Mr. Birch will
23 probably tell you that because there are -- I believe, based
24 upon the little time I've been involved in this case, some

1 very difficult contingent liability issues that need to be
2 addressed or at least recognized with a range of potential
3 liability.

4 So -- the honor has some understanding of not only
5 what the assets are but what are the actual and potential
6 liabilities. And I was -- I do note that there is a pro forma
7 statement of footnotes in one of his -- one of Mr. Birch's
8 reports that alludes to certain liabilities. But there's no
9 analysis of them. There's no investigation of them. There's
10 no forensic digging in to any of those to validate them or to
11 even suggest what the ranges are. And I think that would
12 help.

13 It would be critical to The Court having that
14 information if you're going to divide anything, but it would
15 also -- would really help me in being able to deal with the
16 settlement possibilities in this case also. So those need to
17 get done.

18 MR. DICKERSON: Well I think Mr. Birch will address
19 that. It would be nice if he could be provided with evidence
20 of liability, and I think that's what the issue is.

21 THE COURT: Okay.

22 MR. SOLOMON: Nobody's approached me, Your Honor.

23 THE COURT: If everybody can sit -- everybody --
24 (indiscernible) Mr. Birch remain standing and we'll see --

1 MR. BIRCH: Your Honor --

2 THE COURT: -- what you need, what you think about
3 -- I liked it outgoing as you're doing with the cash flow
4 because that's important for The Court because that was the
5 issue, show me the money.

6 MR. DICKERSON: Your Honor, can he take the stand so
7 he can be heard?

8 THE COURT: Oh, yeah. Why don't you come up to the
9 stand so they can all see you. That way -- you're not back on
10 that. And we'll kind of deal with your ongoing scope and then
11 as far as addressing liability issues and see what we think
12 that we can help these parties out if --

13 MR. BIRCH: Let me address the liability issues
14 first. We did put the notes on of the information that was
15 given us in that one report.

16 THE COURT: Yeah, I remember it.

17 MR. BIRCH: And most of it was contingent. There
18 are no judgments or that type of thing. So the best as it was
19 described to us, we put in that report. If we don't have the
20 evidence, I'm not going to sit there and guess. I'm going to
21 tell you what was reported to us and the evidence I had.
22 That's the only thing I'm going to put in the report. If they
23 have other judgments or things that have happened since then,
24 they can certainly provide me the information.

1 I will say that we -- now I'll get to the cash
2 receipts. I'm only going to report on -- number one, I'm only
3 going to report on the evidence of things that I see, and I'm
4 not going to make a report full of hearsay you said, she said.
5 And the second part on the receipts that go forth, we haven't
6 received anything since May 31st. We missed an investment
7 schedule because we said well these are all draws. That's
8 what was on the books. Now they're saying, well you didn't
9 understand, there's something else behind that.

10 What I'm saying is I'm going to report what you give
11 me on documents and the evidence, and if you don't give it to
12 me I can't report it that way. For example, you talked about
13 the contracts where there were 1099's, no contracts. Don't
14 tell me that we don't write contracts or it's not required
15 because I know it is basically required when you talk about
16 evidence. I'm going to report there are no contracts and
17 there were 1099's. I'm going to report to you, Your Honor,
18 because I work for you, what I see. I will tell you some of
19 the things I'm told, but if I don't have the evidence, I will
20 tell you I don't have the evidence for it.

21 If we are to continue, I would like a date of when I
22 can get the records from 5/31 through the end of the year. I
23 would like The Court to ask the parties when I can have that
24 so we can get some commitments to get it so I can get it done.

1 THE COURT: And what exactly the record so we make
2 it real clear so that no one's saying I don't know what
3 they're talking about? What type of records would you
4 specifically -- I want to make sure that people don't come in
5 and say I didn't know anything.

6 MR. BIRCH: All the record prior to -- that we
7 receive prior to 5/31. That's for all the entities, plus
8 investment accounts which we got some last night and some
9 yesterday. But if there's support behind that, I would like
10 to have that support. If not, I'm going to report that I
11 didn't receive it.

12 MR. DICKERSON: May I inquire? Do you -- I believe
13 you have everything (indiscernible) --

14 MR. BIRCH: Do we?

15 THE COURT: Yeah. Do you know if you have -- we're
16 just trying to clarify (indiscernible). We're trying to see
17 exactly --

18 MR. DICKERSON: Well if there's anything else, but I
19 believe you have everything through the end of the year for
20 her.

21 MR. MILLER: I have to look -- I want to say
22 possibly December we may be missing. From my recollection to
23 October has to deal with credit card (indiscernible).

24 THE COURT: So basically you would like documents or

1 records for both Ms. Lynita --

2 MR. BIRCH: But then he's slow on giving us the
3 documents, and so I would like Your Honor to emphasize that
4 it's important that they come forth with the documents.

5 MS. FORSBERG: Your Honor, a couple questions we can
6 -- if we could.

7 THE COURT: Sure.

8 MS. FORSBERG: As far as the LSN Trust, I don't
9 believe we have anything but the very first report that I've
10 seen. Since I'm playing catch-up, I'm trying to find out
11 where are we on that. Is it just that they just gave them?
12 Perhaps that's what Mr. Dickerson was saying, that they were
13 just given to him.

14 MR. DICKERSON: Oh, no, it's been ongoing. I
15 believe he has everything through December --

16 MS. FORSBERG: We just don't have any reports but
17 one on that entity. That's my question on that it seems like.

18 THE COURT: Okay. I've read things on that. So --
19 are you up to date on LSN and Ms. Lynita up through --

20 MR. MILLER: (Indiscernible.)

21 THE COURT: -- at least up through November?

22 MR. MILLER: Like I said, LSN -- we did the initial
23 report as we've done with the other companies, and then the
24 parties have come back and said I have further evidence that

1 this should be there, this should be here, and we're in the
2 process of reissuing an amendment. And from that we've
3 received all the way up -- I (indiscernible) November for
4 hers.

5 And so on Eric's side we're going through and doing
6 the complex report that goes through and describes he received
7 -- I believe, it's three now. So there's three left, Ban 1,
8 Ban 1AC and (indiscernible) as part of the major expanded
9 reports. And then after that we have received from Eric some
10 further documents that have some questions, and we're going
11 in. And we had just filed last Thursday or Friday an
12 amendment to the Emerald Bay where it shows what it was
13 originally in the report and (indiscernible) further documents
14 that were provided.

15 THE COURT: Yeah. That was filed on January 27th
16 which dealt with clarification as to page five of the other
17 report dealing with Cal Nelson (ph).

18 MR. BIRCH: Yes.

19 THE COURT: Dealing with the skip loader. I think
20 it was the location of the skip loader saying that Ms.
21 Rochelle indicated it's at the RV park in Mississippi and
22 amending page eight as to Cliff Merckel indicating that about
23 the employment contract, that we do not -- been advised not to
24 have employment contracts.

1 So that's what you're talking about clarifying your
2 prior report.

3 MR. MILLER: And I did meet with Lana and Rochelle
4 and Wednesday and they provided me with a wealth of -- on the
5 ELN Trust and there are going to be some significant changes
6 because of -- like I said, some of the Peachtree file
7 descriptions.

8 THE COURT: Okay. And would you state and spell
9 your name for the record, make sure we have it correct.

10 MR. MILLER: Nicholas Miller, N-I-C-H-O-L-A-S M-I-L-
11 L-E-R.

12 THE COURT: Thank you, Nicholas. So you need the
13 reports basically from 5/31 through the end December 31st,
14 2011 from both sides. And you may have LSN up through
15 November. But basically you would need the records from both
16 sides from May --

17 MR. BIRCH: I think what -- what we might do, Nick,
18 and what we should do, let us file a motion with The Court or
19 a paper with The Court, a report of the inventory we're
20 missing so that everybody knows what's out there.

21 THE COURT: Does that work for everybody?

22 MR. BIRCH: Would that help?

23 MR. SOLOMON: It would.

24 MR. DICKERSON: I would ask that they continue with

1 the past December 31st.

2 MS. FORSBERG: Your Honor, and Mr. Nelson he has a
3 question on one of the things, and I don't want to --

4 MR. NELSON: Your Honor, with all due respect,
5 Lynita has one account and they're working through and I'm
6 sure we all see her personal expense are waived. On ours
7 that's what we're trying to determine too. We've located
8 every asset. Every dollar's been accounted for. There's no
9 fraud. We're assured of that.

10 THE COURT: You're assured of it. I'm not sure I'm
11 assured of it.

12 MR. NELSON: Okay. Well we'll get there --

13 THE COURT: That's -- for anyone else.

14 MR. NELSON: -- hopefully. We'll get there
15 hopefully.

16 We -- in our work we'd like to bring up -- there's
17 six accounts. If, for instance, there's two that have been
18 filed -- and once we got the filing just because they're in
19 Peachtree, doesn't mean it has the correct back up. If we
20 could get the -- get the 5/31's we'll make the corrections
21 before they file them. So it would make sense to us and save
22 a tremendous amount of time and confusion if we'd bring all
23 six of our accounts and Lynita's up to 5/31. I sign off on
24 them whether I like them or not. Lynita signs off on them,

1 then I know the girls have been able to give all the backup.

2 Then take them to 5/31 to --

3 MR. BIRCH: Twelve --

4 MR. NELSON: 12/31 because that's a calendar year
5 and a tax year and that ends right there. Then that will save
6 a tremendous amount of time. We can't even get into January
7 till April or May because of the accounting procedure.

8 THE COURT: Does that make sense to you? I'm trying
9 to do what works for --

10 MR. BIRCH: I will report on the records that I get,
11 and those are the reports I'm going to file. I am not going
12 to take additional time to go back and have someone take the
13 opportunity to change all the records.

14 THE COURT: So you --

15 MR. BIRCH: I'm not saying they will, but I'm saying
16 I'm not going to. And the records speak for themselves.

17 THE COURT: So you're okay with the --

18 MR. BIRCH: The record should be correct as they are
19 and not have to be corrected all the time. So I'm saying the
20 reports I'm going to give you, for The Court, are those
21 records that are given to me as being their documents. So
22 they should go through and make sure that if they're worried
23 about documentation, there's something in the records. Get
24 them corrected before we receive them.

1 MR. SOLOMON: Well, you know, we all make mistakes.
2 I'm sorry, Mr. Birch. And if we make a mistake and we don't
3 include something, we would certainly like an opportunity to
4 get to the truth of the matter.

5 THE COURT: Yeah.

6 MR. SOLOMON: And it's a supplemental record, and I
7 apologize --

8 THE COURT: No. We will -- I mean, they correct the
9 things that they had with the notice of the amendment to
10 source and application of funds. So if you give them the
11 information they will make the amendments. The issue is we're
12 not going to do it piece meal and come up there because then
13 it gives a thing that we're scrambling and what's going on.
14 He needs the records so he can make the determinations.

15 If records come up afterwards, then you can submit
16 them to him and see, you know, why they weren't submitted
17 earlier on that or just to get it right on that. But they've
18 been -- they need records. He just needs the records so he
19 can roll on it. And if you keep piecemealing records, he
20 makes a decision saying I'm going to go back and re-look
21 everything. That's wasting everybody's time.

22 So you submit the records you have and get those
23 records on that. If there's something supplemental like you
24 raised in the supplement saying his report -- report

1 indicating you saw this 1099 showing this much and that's the
2 month that the records show, there's a discrepancy. If we go
3 to trial on that, then they can explain the discrepancy and
4 maybe it's poor bookkeeping, maybe something else. But he
5 just reported on what he has. He can't report on what he
6 doesn't have.

7 Is that pretty accurate on that? You need to give
8 the records, they want something, you do it. Make the report
9 to The Court, and if there's holes in that, we can resolve
10 that at trial and they can try to explain that if you felt
11 there's some nefarious conduct. We can do that but you're
12 okay through May 31st 2011. So you need the records from May
13 31st to the end of December. So you can do that thing. If
14 you got other documents before then, don't make any
15 amendments. Just let them know on that and we'll look at
16 that. We just don't want to keep going back and forth on the
17 thing.

18 MR. BIRCH: Here's the thing. We're understanding
19 now that on some of the reports we've filed in the past, which
20 may be two or three months out, as they're looking at them now
21 saying, well if we look back -- so let me go back and give you
22 some further clarification. I'm going to say I don't accept
23 that. In fact, one other place we never got the investment
24 account until last week. So the money went to the investment

1 account. We didn't have an investment account.

2 Give us the investment account. If there is a
3 change in the report, we will certainly file an errata to make
4 sure that the report is correct. But if I -- if we're going
5 back and forth on all that, we'll never get it done.

6 THE COURT: Yeah, it wouldn't. That's been the
7 concern of this case.

8 MR. BIRCH: And don't hold up giving me the
9 information because I need to get through the first blush and
10 we can find out where we are.

11 THE COURT: I agree with you on that. And, again,
12 we'll do things we need on that. But that's been the whole
13 concern is the issues come up and then things change and a new
14 documents come or we didn't have this and it changes the whole
15 thing. You're good business people. You know what you're
16 doing and people aren't stupid. There's going to be in a
17 position you are on that, so given the records you have, if
18 you find records afterwards we'll consider it or not consider
19 it depending on how it goes on that. But he needs the records
20 so he can make it. And we're not talking about this anymore.

21 So we're not going to go there. You've been around
22 this block four hundred times. I'm not going to keep going
23 back to say, okay this document's wrong, this document's
24 right. Give him the records you have. I'm sure you keep good

1 records for the IRS. Everything else give the records.
2 You'll review on those records. If there's a mistake or
3 something that comes up that you overlooked, provide that as
4 well and we'll look at that.

5 But --

6 MR. KARACSONYI: Can we get a time frame, because
7 here's the concern as he's saying. And if you get a chance to
8 look at for what we need and then you go back and make
9 documentation, once he files his report, can we get, you know,
10 five days for them to get all the document to him?

11 THE COURT: Well we'll see how they do.

12 MR. KARACSONYI: Or whatever he's already requested.

13 THE COURT: Where are you at with the --

14 MR. BIRCH: Your Honor, I will file the inventory,
15 the records that we need.

16 THE COURT: Okay.

17 MR. BIRCH: If necessary, we'll file it each time.
18 If I'm not getting an appropriate response I will file and let
19 you know. So I don't want to be on the five days and so forth
20 because I've got to work with them. When can you give me the
21 information.

22 THE COURT: And the business --

23 MR. BIRCH: When are you going to get it, so I
24 expect a contract with them on when I'm going to get the

1 information, rather than a court order. But if I feel I'm not
2 getting cooperation, I will let the honor -- His Honor know
3 that I'm getting a little disappointed.

4 The thing I do know you're going to trial in May.
5 This stuff's got to get done in a hurry.

6 MR. DICKERSON: So if we can have all of this done
7 within two weeks? I mean, the (indiscernible).

8 THE COURT: Can you -- do you know what you need?
9 How long will it take you to prepare the inventory of what
10 records you'd like?

11 MR. BIRCH: We'll have the inventory report to The
12 Court by next week, right?

13 THE COURT: And then submit it to the PARS and they
14 can give you a time frame depending what you look like, what's
15 --

16 MR. BIRCH: Yeah, then they'll have the -- everybody
17 will have the same list, and we will keep track of when we get
18 the inventory. If we need additional we will let you know.
19 If we get the cooperation, I will file a report within 30 days
20 after that that I had the information.

21 THE COURT: Fair enough everybody? Does that work
22 for -- and now as to liabilities, if you got information you
23 need to -- because I know we did the liabilities. They were
24 all contingent about potential litigation or things that were

1 in there and the fact that no one can sit there and say the
2 likelihood of success or not. It's got a lawsuit and no one
3 knows what's going to happen on that.

4 MS. FORSBERG: Your Honor, I don't you're all -- I
5 don't think Mr. Birch is -- they're not all contingent. Some
6 of them are just straight out liens that are approvable with
7 contracts and stuff. Those ones -- those are not the ones
8 you're having a problem with; correct?

9 MR. BIRCH: No, I didn't think I had problems with
10 any of them. If I -- if they told me they were liens we'd put
11 it in the footnote. If it was contingent and there was no
12 judgment, that's what I said. I just have to explain. I'm
13 not the attorney to make a determination.

14 MS. FORSBERG: No, I don't --

15 MR. BIRCH: Mine is to describe so His Honor has the
16 ability to look at the liabilities.

17 MS. FORSBERG: Well a lot of them are specific
18 liens. That's what -- I just don't want (indiscernible) --

19 THE COURT: Yeah, we (indiscernible).

20 MR. BIRCH: Well then I need the specific liens.

21 MS. FORSBERG: Correct. That's what I'm saying.

22 THE COURT: Yeah. Ask him --

23 MR. SOLOMON: Your Honor, we're going to have our
24 own expert dealing with contingent liabilities anyway because

1 I told you we were going to have an accountant. But I just
2 want to acknowledge that they're there so that The Court knows
3 that those have to -- you have to hear evidence on those
4 because it would be extremely critical of how they play --

5 THE COURT: And we had talked about that from day
6 one when we were looking at property and liability and
7 lawsuits and about the Mississippi property lawsuits and they
8 were willing to take their chance on that as well.

9 So we kind of been around there with liabilities in
10 the past on that. And they were saying, fine, we'll take the
11 good with the bad and we're okay with that. And Mr. Nelson a
12 couple times said, well I don't know if you really want that
13 liability because it could be big on that. I was trying to
14 insulate from that, I said, so you can make your own decisions
15 on liabilities. But they have been addressed and been
16 addressed several times from day one. We talked about what
17 was out there and what was the liabilities. But it has been
18 -- maybe they need to get more. But I'm comfortable.

19 I've seen the liabilities, what the value on the
20 contingent. It all depends on what happens in those
21 litigations.

22 MR. DICKERSON: Your Honor, (indiscernible) several
23 times about expert reports. I've been hearing this for
24 months. They've indicated that they plan on hiring several

1 experts. I'd like to --

2 THE COURT: We --

3 MR. DICKERSON: -- have (indiscernible) --

4 THE COURT: We need a scheduling order right now.

5 MR. DICKERSON: And a time period --

6 THE COURT: Yeah.

7 MR. DICKERSON: -- (indiscernible).

8 THE COURT: Yeah, we need a schedule. We'll look at
9 the first week of May. If I give you a March 1st for experts,
10 does that give you time on that --

11 MR. SOLOMON: Your Honor --

12 THE COURT: -- because they got deposition --

13 MR. SOLOMON: -- you got to make a decision on
14 today's hearing first. I submit if you make that decision the
15 way your preliminary argument was, then I think we're not
16 going to have a problem with the May date. I think we're both
17 going to have a problem with the May date if -- depending on
18 how you rule on the first motion. So I don't know if you want
19 to make -- Your Honor also indicated back -- I think it was
20 October, that you intended to do a scheduling order.

21 THE COURT: Yeah, and then we got sidetracked
22 because --

23 MR. SOLOMON: You got sidetracked from that.

24 THE COURT: -- if we didn't know what date --

1 MR. SOLOMON: So --
2 THE COURT: -- it was going to be and then we got
3 sidetracked with the dates and we tend (indiscernible).
4 MR. SOLOMON: I don't disagree that --
5 THE COURT: Yeah.
6 MR. SOLOMON: -- we need a scheduling order for
7 holding that May date. And -- but we need to have the
8 preliminary determination of The Court. And then I still
9 think I can work out a stipulated scheduling order with
10 Counsel once we know your decision.
11 THE COURT: That work for you guys?
12 MR. SOLOMON: That's fair to both of us.
13 MR. DICKERSON: We'll work on it.
14 THE COURT: Yeah, because I'm saying if things go
15 the way it comes out there, there's not a lot of additional
16 discovery. March 1st would work for an expert list and that
17 would give you time to depose and we get everything done with
18 your counter experts before the May trial, because I mean
19 that's -- we're really cutting it real tight. But I don't
20 want to --
21 MR. SOLOMON: I think we already have Mr. Burr's
22 deposition set for --
23 MR. DICKERSON: February --
24 MR. SOLOMON: February 22nd.

1 THE COURT: But that -- okay, so you got that
2 moving.

3 MR. SOLOMON: So that's -- we're moving, Your Honor.

4 THE COURT: Okay. All right. Then the case given
5 that -- that decision on that.

6 And you're going to basically do what you need for
7 inventory for the records of both sides. And then if you feel
8 that they're delaying on that or not cooperating, then you
9 bring it before The Court and then we can address that with
10 all the parties.

11 MR. BIRCH: Your Honor, what would also be helpful
12 is if I could be added to the notice list of when they file
13 motions.

14 MR. DICKERSON: Absolutely. I'll send him copies of
15 anything --

16 THE COURT: Any concern about the --

17 MR. SOLOMON: Sure, I'll be happy to if that's what
18 he wants.

19 THE COURT: Okay. All right. We'll add you to the
20 notice list. And from --

21 MR. BIRCH: Yeah, I would like to see that because
22 I'm trying to get a flavor because I don't want to spend the
23 money and the time for these people to pay if we reach a place
24 where it's not needed.

1 MR. SOLOMON: We all appreciate that.

2 MR. BIRCH: And that's where I'm asking for
3 instruction of The Court. I'm trying to be fair with both
4 parties on that.

5 THE COURT: Yeah. So we'll get you on notice of any
6 motions. That way they know on that. And, again, I've got to
7 make my point clear a hundred and eighteen times. I think you
8 need to sit there and see if you can settle it. I'm not going
9 to order settlement discussions. We've been through that road
10 fourteen hundred times. But the issue on that I've tried to
11 give you some direction from The Court where The Court -- how
12 The Court sees the case, not what my decision will be, but how
13 I see The Court to try to be fair to the parties and get the
14 matter resolved on that.

15 But it's your money and time and we'll get it
16 resolved one way or the other.

17 Anything else you need, Mr. Birch, as far as --

18 MR. BIRCH: No. Thank you, Your Honor.

19 THE COURT: Thank you.

20 All right. And then what I'll do is I'll have my
21 court clerk contact you. I'm not sure if we'll just do it on
22 the record what my findings are or I'll just draft the order
23 myself. Let me look at it and see what it looks time for time
24 frame. If you do, we'll contact all counsel on that and we

1 can come do it on the record if we need to do that or if I'm
2 going to write out findings.

3 I got so many things going on with my other thing I
4 just don't want to delay it any longer than we need.

5 MR. SOLOMON: Thank you.

6 MS. FORSBERG: Thank you, Your Honor.

7 THE COURT: All right? Thanks.

8

9 (PROCEEDINGS CONCLUDED AT 15:20:23)

10 * * * * *

11 ATTEST: I do hereby certify that I have truly and
12 correctly transcribed the digital proceedings in the
13 above-entitled case to the best of my ability.

14

15 /s/ Kimberly McCright
16 Kimberly McCright, CET
17 Certified Electronic Transcriber

18

19

20

21

22

23

24

FILED
2/17/12

1 **NOTC**

2 Larry L. Bertsch, CPA, CFF
3 Nicholas S. Miller, CFE
4 LARRY L. BERTSCH, CPA & ASSOCIATES
5 265 East Warm Springs Rd., Suite 104
6 Las Vegas, Nevada 89119
7 Telephone: (702) 471-7223
8 Facsimile: (702) 471-7225

9 *Forensic Accountants*

7 **DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

9 ERIC L. NELSON,

10 Plaintiff,

11 v.

12 LYNITA SUE NELSON,

13 Defendant.

Case No. D-09-411537-D
Dept. O

**NOTICE OF FILING SOURCE AND
APPLICATION OF FUNDS FOR
BANONE-AZ, LLC**

15 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
16 L. BERTSCH, CPA & ASSOCIATES, file the Source and Application of Funds for Banone-AZ,
17 LLC, a copy of which is attached as **Exhibit "A."**

18 DATED this 16 day of February, 2012.

19 **LARRY L. BERTSCH CPA & ASSOCIATES**

20 

21 Larry L. Bertsch, CPA, CFF
22 Nicholas S. Miller, CFE
23 265 East Warm Springs Rd., Suite 104
24 Las Vegas, Nevada 89119
25 *Forensic Accountants*
26
27
28


CERTIFICATE OF SERVICE

I certify that on the 16 day of February, 2012, I mailed a copy of the foregoing **NOTICE OF FILING SOURCE AND APPLICATION OF FUNDS FOR BANONE-AZ, LLC** to the following at their last known address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and addressed as follows:

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*Attorneys for Eric L. Nelson Nevada
Trust*



An employee of Larry L. Bertsch, CPA & Associates

EXHIBIT A

Source and Application of Funds
For
Banone-AZ, LLC

From January 1, 2009 through May 31, 2011

District Court Family Division

Clark County, Nevada

Case Number: D-09-411537-D

Department O

Report Date: February 15, 2012

Prepared by:

Larry L. Bertsch, CPA, CFF

&

Nicholas Miller, CFE, CSAR, MBA

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Banone-AZ, LLC Financial Report

From January 1, 2009 through May 31, 2011

Sources of Cash

Beginning Cash/Equivalents	-	(A)
Intercompany Transfers	1,182,832.46	(B)
Eric Nelson	50,000.00	(C)
Rental Income	682,352.07	(D)
Soris Note Interest	31,225.05	(E)
Refunds	43,914.24	(F)
Line of Credit	300,000.00	(G)
Total Sources	2,290,323.82	

Applications of Cash

Eric Nelson	54,000.00	(H)
Related Individuals	347,732.82	(I)
Investments	817,581.81	(J)
Intercompany Transfers	519,200.00	(K)
Rental Expenses	244,050.35	(L)
Operating Expenses	2,686.07	(M)
Frank Soris Transaction	292,177.85	(N)
Other Individuals	2,000.00	(O)
Ending Cash	10,894.92	(P)
Total Applications	2,290,323.82	

Footnotes to the Financial Statement

The following report is based upon Peachtree Accounting records produced, written statements from Eric Nelson regarding various transactions and supporting documentation provided.

Sources of Cash

Beginning Cash/Equivalents	-	(A)
Intercompany Transfers	1,182,832.46	(B)
Eric Nelson	50,000.00	(C)
Rental Income	682,352.07	(D)
Soris Note Interest	31,225.05	(E)
Refunds	43,914.24	(F)
Line of Credit	300,000.00	(G)
Total Sources	2,290,323.82	

- A. Beginning Cash & Cash Equivalents - As of January 1, 2009, Banone-AZ, LLC ("Banone-AZ") had no beginning balances located in financial institutions.
- B. Intercompany Transfers – Between January 2009 and May 2011, Banone-AZ deposited \$405,332.46 in funds from Eric Nelson Auctioneering, Inc. ("ENA"), The Eric L. Nelson Nevada Trust ("ELN NV") and Banone, LLC ("Banone"). The following chart indicate the date and amount of each transfer:

Date	Banone	ELN NV	ENA
02/23/09	2,000.00		
03/12/09	10,000.00		
05/04/09		100,000.00	
05/06/09	4,000.00		
05/20/09	50,000.00		
06/01/09			100,000.00
06/29/09			332.46
10/23/09	15,000.00		
12/01/09	20,000.00		
03/02/10	20,000.00		
03/24/10	15,000.00		
09/20/10	25,000.00		
10/06/10	20,000.00		
11/10/10	15,000.00		
03/03/11	9,000.00		
	205,000.00	100,000.00	100,332.46

In addition to the cash deposits, between January 2009 and May 2011, Banone-AZ received \$777,500.00 in Cashier's Checks from Banone and ELN NV. According to the records of Banone-AZ, the Cashier's checks were utilized for Ernest Money Deposits on the house purchases. The following chart indicates the months in which Banone-AZ received Cashier's Checks from Banone and ELN NV:

Month	Banone	ELN NV
Jan-09	355,000.00	
Feb-09	100,000.00	
Mar-09	20,000.00	
Apr-09	200,000.00	
Aug-09		55,000.00
Sep-10	47,500.00	
	<u>722,500.00</u>	<u>55,000.00</u>

The receipt of the Cashier's Checks is recorded on the books of Banone-AZ as "Deposits AZ Potential Purchase". According to the books, when a Cashier's Check is placed against a property in the form of an Ernest Money Deposit, the money is subtracted/credited from the "Deposits AZ Potential Purchase" and added/debited against the corresponding asset account. Unused Cashier's Checks were returned to Banone and/or ELN NV and deposited in their bank accounts. In a coupe instances, Cashier's checks were not used as Ernest Money Deposits but went to or for the benefit of Individuals and are described further in the expense portion of this report.

- C. Eric Nelson – On May 26, 2009, Eric Nelson deposited \$50,000.00 into Banone-AZ. The transaction was recorded against the "Deposits AZ Potential Purchase" account with a description of "Rtn of cashiers checks AZ"

- D. Rental Income – Between January 1, 2009 and May 31, 2011, Banone-AZ received the following deposits relating to rental income.

	Rental Income		
	2009	2010	2011
Jan		20,217.00	30,047.00
Feb		31,953.00	34,807.00
Mar		30,082.00	35,147.00
Apr	7,380.00	32,802.00	16,047.08
May	13,465.00	26,903.00	20,414.00
June	18,291.00	33,626.00	
July	19,470.00	29,963.00	
Aug	24,166.00	28,752.00	
Sept	21,499.00	27,742.00	
Oct	22,815.00	29,101.99	
Nov	25,380.00	31,901.00	
Dec	34,575.00	35,806.00	
	187,041.00	358,848.99	136,462.08

- E. Soris Note Interest – Between January 1, 2009 and May 31, 2011, Banone-AZ received the following interest payments relating to the Frank Sorris Note:

	Sorris Note interest		
	2009	2010	2011
Jan		6,245.01	
Feb			
Mar		6,245.01	
Apr			
May			
June			
July			
Aug			
Sept			
Oct	6,245.01		
Nov	6,245.01		
Dec	6,245.01		
	18,735.03	12,490.02	-

- F. Refunds – Between January 1, 2009 and May 31, 2009, Banone-AZ received refunds totaling \$43,914.24. The following chart indicates the date, payor, amount and Peachtree description of each transaction:

Date	Payor	Amount	Description
06/26/09	Great American Title	20.00	overpymnt refund from title 3020 87th
01/07/10	Arizona Public Service	51.93	refund of overpymnt tonto
03/03/10	Arizona Public Service	116.09	refund of overpymnt utilities
03/05/10	Fidelity Title	16.00	refund overpymnt home warranty 11421 w cocopah
04/30/10	Maricopa Treasurer	712.35	11421 W Cocopah overpy on property taxes
07/06/10	Arizona Carpet & Tile Cleaning	135.00	Pima carpet cleaning
08/05/10	Maricopa Treasurer	12,751.34	overpymnt of property taxes
09/29/10	Stewart Title	6,375.00	refund of EMD on 2601 Dahlia Dri
10/05/10	Lawyers Title	5,000.00	refund of earnest \$ deposit on 1927 E sheridan
10/12/10	Old Republic Title	1,375.00	Refund of EMD on 18401 n 11th
10/21/10	Old Republic Title	6,375.00	refund of 18401 n 11th earnes money
10/07/10		167.41	Refund 4205 N 109th
10/08/10		148.00	Refund ck #560773 6740 W Cypress
10/08/10	Stewart Title	3,875.00	Refund on 8409 Pinchot
10/21/10	Stewart Title	2.49	refund from title 6911 Monte Vista
10/14/10	Ultra Escrow	5,000.00	EMD Refund on 12620 N 20th
10/21/10	Ultra Escrow	551.02	refund 2014 n 50th overpymnt
11/01/10	Ultra Escrow	656.76	Refund on 5901 W Clarendon
12/27/10	Old Republic Title	120.00	refund of overpymnt 8239 Avalon
12/27/10	Ultra Escrow	435.85	refund of 8135 Sells overpymtn
01/14/11	Ultra Escrow	30.00	refund of overpymnt on 8135 Sells AVenue
		<u>43,914.24</u>	

- G. Line of Credit - During October and December of 2010, Banone-AZ received a total of \$300,000.00 from the BNY Mellon Line of Credit (“LOC”). The following list describes the dates and amounts of each transaction:

Date	Amount
10/05/10	100,000.00
10/12/10	100,000.00
12/15/10	100,000.00
	<u>300,000.00</u>

Applications of Cash

Eric Nelson	54,000.00	(H)
Related Individuals	347,732.82	(I)
Investments	817,581.81	(J)
Intercompany Transfers	519,200.00	(K)
Rental Expenses	244,050.35	(L)
Operating Expenses	2,686.07	(M)
Frank Soris Transaction	292,177.85	(N)
Other Individuals	2,000.00	(O)
Ending Cash	10,894.92	(P)
Total Applications	2,290,323.82	

- H. Eric Nelson – According to the books and records of Banone-AZ, on May 18, 2009, Eric Nelson received a check for \$50,000.00 with a description of “reimbursement for Cashiers checks for potential AZ Properties”. According to the records, it appears that Eric returned the \$50,000 on May 26, 2009 as evidenced in Section C of this report. On September 25, 2009, Eric received a check for \$4,000.00.
- I. Related Individuals - Between January 2009 and May 2011, Banone-AZ made payments to related individuals directly and/or toward these related individuals expenses. The following is a description of the direct payments and expenses paid on behalf of Banone-AZ:

Name	Amount	Relationship	Reference
Eric T. Nelson	183,234.29	Eric's Nephew (Paul's son)	(a)
Kevin Bailey	87,940.87	Eric's nephew (Paul's son-in-law)	(b)
Paul Nelson	35,895.12	Eric's Brother	(c)
Ryan Nelson	40,662.54	Eric's Nephew (Paul's son)	(d)
	<u>347,732.82</u>		

- a) Eric T. Nelson (Paul's son) – Between January 1, 2009 and May 31, 2011, Eric T. Nelson received and/or benefited from payments totaling \$183,234.29. Of this amount, \$87,400.00 was recorded as management fees while \$95,834.29 was for reimbursement. The following two (2) schedules indicate Eric T. Nelson transactions:

Date	Amount	Payee	Fees Description
06/10/09	3,000.00	Eric T Nelson	monthly fee
07/01/09	3,000.00	Eric T Nelson	Contractor
08/06/09	300.00	Eric T Nelson	contractor
08/19/09	2,700.00	Eric T Nelson	Remainder of fee from last check
09/01/09	3,000.00	Eric T Nelson	Monthly Fee
10/07/09	3,000.00	Eric T Nelson	property mgmt
11/16/09	3,000.00	Eric T Nelson	November
12/01/09	3,000.00	Eric T Nelson	fee
12/16/09	1,000.00	Eric T Nelson	Merry Christmas
01/14/10	3,000.00	Eric T Nelson	contractor fee
01/29/10	5,000.00	Eric T Nelson	fee
02/01/10	3,000.00	Eric T Nelson	Feb
02/12/10	7,500.00	Eric T Nelson	\$ for mgmt of properties (reimbursement acct)
02/12/10	2,500.00	Eric T Nelson	
03/15/10	3,000.00	Eric T Nelson	Mgmt fees of properties
04/16/10	3,000.00	Eric T Nelson	Mgmt of properties - AZ
05/11/10	3,000.00	Eric T Nelson	Property Mgmt fee
06/23/10	2,700.00	Eric T Nelson	property mgmt fee May
07/16/10	2,400.00	Eric T Nelson	July Property mgmt
09/13/10	5,100.00	Eric T Nelson	mgmt fees/rentals (2mos)
10/13/10	3,150.00	Eric T Nelson	InvoiceAZ rentals
11/10/10	2,850.00	Eric T Nelson	mgmt fee - Oct
12/31/10	3,900.00	Eric T Nelson	mgmt fee
02/02/11	3,300.00	Eric T Nelson	Mgmnt AZ homes - January
03/09/11	4,200.00	Eric T Nelson	Mgmt AZ properties (28 properties)
04/26/11	4,050.00	Eric T Nelson	property mgmt fee march rents
04/26/11	3,750.00	Eric T Nelson	property mgmt az rentals april
	<u>87,400.00</u>		

Reimbursements			
Date	Amount	Payee	Description
03/03/09	15,000.00	Cashier's Check	Truck Eric T used from az potential purchases
06/03/09	479.67	Wachovia Dealer	Eric T Truck pymnt 07 Chev
06/26/09	482.83	Wachovia Dealer	eric t truck
07/29/09	482.83	Wachovia Dealer	Eric T truck pymnt
09/04/09	482.83	Wachovia Dealer	ERic T lease pymnt
10/07/09	482.83	Wachovia Dealer	eric t truck pymnt
11/04/09	482.83	Wachovia Dealer	Eric T lease pymnt
12/04/09	482.83	Wachovia Dealer	Eric T Lease pymnt
01/15/10	482.83	Wachovia Dealer	
03/15/10	1,231.28	Eric T Nelson	reimbursment
04/16/10	1,657.47	Eric T Nelson	reimbursement
05/10/10	5,056.82	Eric T Nelson	reimbursement
06/23/10	3,320.52	Eric T Nelson	
07/16/10	582.79	Eric T Nelson	reimbursement repairs
09/13/10	2,223.37	Eric T Nelson	repairs reimbursment rentals
10/13/10	3,123.23	Eric T Nelson	
10/21/10	10,000.00	Eric T Nelson	for repairs properties 10,000
11/10/10	5,000.00	Eric T Nelson	CC #30164466 used for expenses reimbursed to ERic T
11/10/10	4,362.10	Eric T Nelson	reimbursement
11/10/10	5,000.00	Eric T Nelson	reimbursmeent
12/06/10	5,139.91	Eric T Nelson	reimbursement
12/31/10	7,088.78	Eric T Nelson	reimbursement
02/02/11	9,383.46	Eric T Nelson	reimbursement
03/09/11	4,771.55	Eric T Nelson	reimbursement Expenses
05/09/11	9,033.53	Eric T Nelson	reimbursment rentals
	<u>95,834.29</u>		

We have not received employment records or contractor agreements between Eric T. Nelson and Banone-AZ. Section (I)(e) of this report includes a reconciliation of 1099s produced for Banone-AZ for Eric T. Nelson.

b) Kevin Bailey (Paul's son-in-law) - Between January 1, 2009 and May 31, 2011, Kevin Bailey received and/or benefited from payments totaling \$87,940.87. Of this amount, \$72,424.00 was recorded as management fees while \$15,516.87 was for reimbursement as reported below:

Fees			
Date	Amount	Payee	Description
06/10/09	3,000.00	Kevin Bailey	monthly fee
07/01/09	3,000.00	Kevin Bailey	contractor
08/06/09	2,424.00	Kevin Bailey	fees
09/01/09	3,000.00	Kevin Bailey	Monthly Fee
10/07/09	3,000.00	Kevin Bailey	Property Mgmt
11/16/09	3,000.00	Kevin Bailey	November
12/01/09	3,000.00	Kevin Bailey	fee
12/16/09	1,000.00	Kevin Bailey	Merry Christmas
01/14/10	3,000.00	Kevin Bailey	contractor fee
01/29/10	5,000.00	Kevin Bailey	fee
02/01/10	3,000.00	Kevin Bailey	Feb
02/12/10	7,500.00	Kevin Bailey	loan for new mgmt co
02/12/10	2,500.00	Kevin Bailey	
03/15/10	3,000.00	Kevin Bailey	mgmt fee properties
04/16/10	3,000.00	Kevin Bailey	mgmt fee Soris properties
05/31/10	3,000.00	Kevin Bailey	mgmt fee rental properties May
09/02/10	9,000.00	Kevin Bailey	Mgmt June/Jul/Aug
10/22/10	6,000.00	Kevin Bailey	Sept/Oct Mgmt Fee
12/01/10	3,000.00	Kevin Bailey	Nov Mgmt Fees Rentals
12/30/10	3,000.00	Kevin Bailey	December Fees - Soris Mgmt
	<u>72,424.00</u>		

Reimbursements			
Date	Amount	Payee	Description
06/26/09	2,955.05	Kevin Bailey	rpclment reimbursement ck
08/28/09	2,847.63	Kevin Bailey	reimbursement
06/17/10	400.00	Kevin Bailey	reimbursement
07/01/10	4,965.99	Kevin Bailey	reimbursmnt repairsMar - June
10/22/10	4,348.20	Kevin Bailey	repairs reimbursment
	<u>15,516.87</u>		

We have not received employment records or contractor agreements between Kevin Bailey and Banone-AZ. Section (I)(e) of this report includes a reconciliation of 1099s produced for Banone-AZ for Kevin Bailey.

- c) Paul Nelson (Eric's Brother) – Between January 1, 2009 and May 31, 2011, Paul Nelson received and/or benefited from payments totaling \$35,895.12. Of this amount, \$20,376.18 was direct payments for fees while, \$15,518.94 was for reimbursement and/or expenses. The following charts indicate each payment:

Direct Payments			
Date	Amount	Payee	Description
06/10/09	5,000.00	Cashier's Check	cc from \$ wired /port as commi
10/22/09	897.43	Paul Nelson	Fee - Less Health Ins & Car pymnt
11/19/09	5,000.00	Cashier's Check	To record monies kept by Paul Nelson
12/16/09	897.43	Paul Nelson	Fee - Less Health Ins & Car pymnt
01/07/10	897.43	Paul Nelson	Fee - Less Health Ins & Car pymnt
02/04/10	933.89	Paul Nelson	Fee - Less Health Ins & Car pymnt
09/20/10	3,750.00	Paul Nelson	property purchases work - AZ
02/16/11	3,000.00	Paul Nelson	work to analyze homes
	<u>20,376.18</u>		

Expenses / Reimbursements			
Date	Amount	Payee	Description
06/10/09	761.16	Ford Credit	Vehicle Lease-Paul Nelson
07/08/09	761.16	Ford Credit	Auto Lease-PN
07/23/09	724.91	Ford Credit	Auto Lease-PN
07/23/09	761.16	Ford Credit	Auto Lease-PN
08/13/09	1,403.56	Paul Nelson	Reimbursement for Gas for AZ Travel
09/09/09	688.66	Ford Credit	paul truck pymnt
10/07/09	724.91	Ford Credit	paul truck pymnt
10/22/09	620.93	Paul Nelson	AZ travel for research/purchase of az properties
11/04/09	1,341.41	United Healthcare	paul portion insurance
11/20/09	724.91	Ford Credit	Ford F350 lease pymnt
12/01/09	1,341.41	United Healthcare	Paul portion of health ins -
12/16/09	724.91	Ford Credit	paul truck pymnt
01/19/10	1,317.62	Paul Nelson	gas reimbursement
02/08/10	402.11	Paul Nelson	gas reimbursement
01/21/10	724.91	Ford Credit	truck pymnt
01/21/10	1,341.41	United Healthcare	paul insurance
10/11/10	713.00	Paul Nelson	AZ travel/ work for prep for homes purchases
12/10/10	440.80	Paul Nelson	gas reimbursement for AZ investments
	<u>15,518.94</u>		

We have not received employment records or contractor agreements between Paul Nelson and Banone-AZ. Section (I)(e) of this report includes a reconciliation of 1099s produced for Banone-AZ for Paul Nelson.

- d) Ryan Nelson (Paul's son) – Between January 1, 2009 and May 31, 2011, Ryan Nelson received and/or benefited from payments totaling \$40,662.54. \$40,500.00 was recorded as management fees while \$162.54 was for reimbursement as reported below:

Fees			
Date	Amount	Payee	Description
06/10/09	3,000.00	Ryan Nelson	monthly feet
07/01/09	3,000.00	Ryan Nelson	contractr
08/06/09	3,000.00	Ryan Nelson	contractor fees
09/01/09	3,000.00	Ryan Nelson	Monthly Fee
10/07/09	3,000.00	Ryan Nelson	property mgmt
11/16/09	3,000.00	Ryan Nelson	November
12/01/09	3,000.00	Ryan Nelson	fee
12/16/09	1,000.00	Ryan Nelson	Merry Christmas
01/14/10	3,000.00	Ryan Nelson	contractor fee
01/29/10	5,000.00	Ryan Nelson	fee
02/01/10	3,000.00	Ryan Nelson	Feb
02/12/10	7,500.00	Ryan Nelson	
	<u>40,500.00</u>		

Reimbursements			
Date	Amount	Payee	Description
06/26/09	162.54	Ryan Nelson	rplcmnt for rimbursments

We have not received employment records or contractor agreements between Ryan Nelson and Banone-AZ. Section (I)(e) of this report includes a reconciliation of 1099s produced for Banone-AZ for Ryan Nelson.

- e) 1099 Reconciliation – According to the copies of 1099s and the Peachtree files, both of which were produced by Eric Nelson, we have found discrepancies between the two as shown below:

	2009		2010	
	1099	Records	1099	Records
Eric T. Nelson	25,000.00	22,000.00	42,600.00	50,100.00
Kevin Bailey	28,000.00	21,424.00	43,500.00	51,000.00
Paul Nelson	43,000.00	11,794.86		5,581.32
Ryan Nelson	25,000.00	22,000.00	18,500.00	18,500.00
	121,000.00	77,218.86	104,600.00	125,181.32

As the 1099s are only copies, we cannot determine if the 1099s were filed with the IRS.

- J. Investments – Between January 1, 2009 and May 31, 2011, Banone-AZ purchased investments totaling \$817,581.81, consisting of \$359,281.81 in direct cash payments from Banone-AZ bank accounts and \$458,300.00 in Cashier's Checks from Banone and ELN NV. Said investments related to the purchase of real estate. The following chart indicates the various payments for these investments:

Cash Payments		
Date	Amount	Description
05/12/09	25,266.64	7614 W. McKenzie
05/21/09	22,934.63	6055 W Hollyhock
05/27/09	36,062.80	1312 W 6th Drive
06/17/09	36,636.53	3020 87th Purchase
09/20/10	5,000.00	5901 W Clarendon
09/20/10	1,375.00	EMD wire 2601 Dahalia
09/20/10	1,375.00	EMD Wire 18401 N 11th Avenue
09/20/10	625.00	EMD Wire 4205 N 109th
09/20/10	20,000.00	EMD wire 6740 w cypress st
09/20/10	250.00	wire for emd 1323 W apache
09/22/10	1,375.00	wire for emd 8409 W pinchot
09/22/10	20,000.00	wire for emd 5901 w clarendon
09/30/10	1,950.00	12620 n 20th
10/06/10	23,634.55	wire 2014 n 50th
10/06/10	31,957.64	Wire 4205 N 109th
10/06/10	1,261.32	Wire 6740 Cypress
10/07/10	29,925.69	1323 W Apache Wire
10/13/10	25,281.40	Wire Monte Vista
10/13/10	1,370.64	Wire to title on Clarendon
11/10/10	2,500.00	Cashiers checks 30164463 Auction 8135 Sells
11/10/10	5,000.00	Cashiers checks 30164465 for Auction 8135 Sells
11/10/10	5,000.00	Cashiers checks 30164464 for Auction - 8239 Avalon Earnest Money
12/16/10	33,486.72	Wire on 8135 Sells
12/16/10	27,013.25	Wire on 8239 Avalon
	<u>359,281.81</u>	

Cashier's Checks

458,300.00

- K. Intercompany Transfers – During 2010 and 2011, Banone-AZ transferred a total of \$519,200.00 in cash and Cashier's Checks to Banone, LLC and ELN NV. \$195,000.00 was transferred in cash while \$324,200.00 was transferred in Cashier's Checks. The following is a list of the cash transfers:

Date	Amount
10/05/10	50,000.00
10/13/10	75,000.00
11/02/10	5,000.00
12/16/10	50,000.00
01/27/11	15,000.00
	<u>195,000.00</u>

As explained in on Pages three (3) and four (4) of Section B (Intercompany Transfers) to this report, Banone-AZ returned various amounts of unused Cashier's Checks. The following chart indicates the amounts of money returned during the various months:

Month	Banone	ELN NV
Feb-09	64,960.00	
Mar-09	90,040.00	
Apr-09	135,000.00	
May-09	10,000.00	
Oct-09		24,200.00
	<u>300,000.00</u>	<u>24,200.00</u>

- L. Rental Expenses - The following chart explains the payments relating to rental real property:

Type	Amount	
Expenses	140,559.91	(a)
HOA	1,019.19	(b)
Insurance	7,664.37	(c)
Taxes	88,973.02	(d)
Utilities	5,833.86	(e)
	<u>244,050.35</u>	

- a) Expenses – Between January 1, 2009 and May 31, 2011, Banone-AZ paid various companies and/or individuals for expenses and/or work performed on the rental house owned by Banone or Banone-AZ. The chart on the following page (page 20) indicates the payments to these companies and/or individuals:

Expenses	
Name	Amount
Abel Screen and Windows	2,725.00
Alejandro Lora	2,635.00
Arizona Carpet & Tile Cleaning	270.99
Arizona Public Service	70.18
B&B Appliances	3,746.89
Cardmember Service	200.00
City of Glendale	37.50
City of Phoenix	329.87
City of Phoenix Finance Dept	57.50
Claudio Herrera Clark	200.00
Debit Card	78,518.36
Hector Angelo Ramirez	21,060.00
Jessica Barrett	500.00
Jesus Vasquez	10,925.42
Jose Hernandez	500.00
Juan Martinez	6,180.00
Luis Perez	9,292.20
Misael Barraza	650.00
Nevada Dept of Taxation	100.00
Peter Gutierrez	845.00
R&J Windows & Screens	1,200.00
Recording Fees 4838 W Berkeley @ Trustee Sale	16.00
Yolanda Rivera	500.00
	<u>140,559.91</u>

- b) HOA – Between January 1, 2009 and May 31, 2011, Banone-AZ paid Home Owner's Association ("HOA") fees totaling \$1,019.19 to the following HOAs.

Name	Amount
Fieldcrest HOA	198.00
RYANS RIDGE HOA	505.19
Vineyard Hills Estates	316.00
	<u>1,019.19</u>

- c) Insurance - Between January 1, 2009 and May 31, 2011, Banone-AZ paid Insurance totaling \$7,664.37 to Capital Premium Financing and JPG Insurance as follows:

Name	Amount
Capital Premium Financing	3,182.45
JPG Insurance	4,481.92
	<u>7,664.37</u>

- d) Taxes - Between January 1, 2009 and May 31, 2011, Banone-AZ paid taxes to various Arizona agencies totaling \$88,973.02 as shown below:

Name	Amount
City of Glendale	441.68
City of Phoenix	12,342.69
Maricopa County	76,188.65
	<u>88,973.02</u>

- e) Utilities - Between January 1, 2009 and May 31, 2011, Banone-AZ paid utility companies located in Arizona totaling \$5,833.86 as shown below:

Name	Amount
Arizona Public Service	197.60
City of Phoenix	729.29
Salt River Project	4,906.97
	<u>5,833.86</u>

- M. Operating Expenses - Between January 1, 2009 and May 31, 2011, Banone-AZ paid \$2,686.07 in expenses commonly found in operational business. The following chart describes the categories of expenses:

Name	Amount
Bank Charge	1,881.49
License	500.00
Postage/Shipping	304.58
	<u>2,686.07</u>

- N. Frank Soris Transaction - Between January 1, 2009 and May 31, 2011, Banone-AZ paid \$292,177.85 to Frank Soris ("Soris"), and/or an entity owned by Soris, directly and/or paid expenses for Soris' benefit. The following is a chart explains the transactions whereby Soris and/or an entity received direct payments:

Date	Amount	Name	Description
10/21/09	16,300.00	Soris Enterprises	rent
11/17/09	16,300.00	Soris Enterprises	Rent
12/02/09	6,300.00	Soris Enterprises	Rent
12/03/09	10,000.00	Soris Enterprises	Rent
01/02/10	6,300.00	Soris Enterprises	Soris 1031 Exchange
01/03/10	10,000.00	Soris Enterprises	Rent per 1031 Exchange
02/26/10	16,557.00	Soris Enterprises	rent per 1031 exchange
03/24/10	16,557.00	Soris Enterprises	Rent
04/06/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
05/10/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
06/02/10	10,300.00	Soris Enterprises	Rent to Soris per 1031 Exchange - net owed to Soris (10,300)
07/08/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
08/06/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
09/02/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
10/11/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
11/05/10	10,300.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
12/30/10	10,000.00	Soris Enterprises	Rents to Soris per 1031 Exchange - Net owed to Soris (10,300)
01/31/11	300.00	Soris Enterprises	remaining bal from Dec that was shorted
03/03/11	31,325.00	Grey Thorn, LLC	Soris Rents (Jan - March) to his new rental acct
03/30/11	12,329.22	Grey Thorn, LLC	Soris properties monies owed
	<u>234,668.22</u>		

In addition to the direct payments, Soris benefited from expenses paid for by Banone-AZ as follows:

Date	Amount	Name	Description
03/22/10	16.00		REcoding Fees 8809 Indianola
03/08/10	30.00		recording costs for 8619 mohave pd by banone-az
03/22/10	16.00		Recording Fees 6212 Claremong
03/22/10	16.00		Recording Fees 2934 Citrus
03/22/10	16.00		Recording Fees 3020 87th
03/22/10	16.00		Recording Fees 3152 N 24th
03/22/10	16.00		REcoding Fees 4010 88th
03/22/10	16.00		Recording Fees 4047 76th
03/22/10	16.00		Recording Fees 4441 77th
03/22/10	16.00		Recording Fees 6520 W Palm
03/22/10	16.00		Recording Fees 7614 McKenzie
03/22/10	16.00		Recording Fees 7741 Colter
03/22/10	16.00		Recording Fees 8237 Clarendon
03/22/10	16.00		Recording Fees Alta Vista
03/22/10	16.00		Recording Fees Burgess
03/22/10	16.00		Recording Fees Hollyhock
03/22/10	16.00		Recording Fees Lydia
03/22/10	16.00		Recording Fees Minnezona
03/22/10	16.00		Recording Fees Pima
03/22/10	16.00		Recording Fees San Miguel
03/22/10	16.00		Recording Fees W Cypress
03/24/10	3,300.00	Fidelity National Title Ins.	title work on Soris deeds
03/24/10	20,000.00	The Larsen Company	Work on Soris Property Deeds/Tsf
06/17/10	14,094.72	Maricopa County	Soris property taxes - az lots
02/18/11	16,944.73	Maricopa County	2010 Soris Property Taxes AZ
02/25/11	2,804.18	Maricopa County	2010 property taxes parcel 102-24-549 1
02/02/11	16.00		re-recording fees for w palm to Soris
	<u>57,509.63</u>		

- O. Other Individuals – On May 9, 2011, Banone-AZ paid Jose Rico Moran \$2,000.00 for “AZ rentals maintence - moving allowance per contract”

1 testimony that's already been elicited will have to be
2 reconsidered by another judge, six days of trial testimony.
3 The same things are going to occur.

4 What we're simply saying, Your Honor, is let's hear
5 everything together. Let's not have several litigations going
6 on. Dismissing the third party complaint is not the solution.
7 It's not going to get us where we need to be. It's not going
8 to allow This Court to make the decisions it wants to make.
9 Respectfully, the -- excuse me.

10 One of the points that you brought up today is that
11 you could award alimony to do equity, that you could find that
12 even if the trust is a separate entity --

13 THE COURT: I could do charging orders against the
14 trust.

15 MR. KARACSONYI: Right. The problem with --

16 THE COURT: Or any interest that Eric would have on
17 that. But then they could decide not to distribute and tie it
18 that way.

19 MR. KARACSONYI: So they could decide not to
20 distribute. They could come in here and argue that you had no
21 authority to do that because if the trust is valid, as found
22 by this other court listening to the same testimony, starting
23 this whole process all over, that Your Honor is legally
24 prohibited from considering that fact because that belongs to

1 the separate entity or trust estate planning tool. To us,
2 that is why it is necessary that The Court hear these matters.

3 In addition, they have come in and they started
4 these whole -- remember, it's them who started this whole
5 process. Originally, there's no argument. This is all
6 community property, this is how I propose we distribute it, I
7 don't argue that it's community property. Then midstream they
8 change course; okay? So that's how we started this process.
9 Now, if they -- if The Court dismisses the third party
10 complaint, they're the one who initially came in here and
11 said, we have an action for declaratory relief, we want you to
12 declare, Judge, that this property titled in the name of the
13 ELN Trust does not belong to either of these parties. That
14 would be the only claim remaining before This Court; okay?

15 The ELN Trust would argue that basically without
16 them, without any causes of action asserted against them,
17 without any remaining claims against them, that you've
18 basically stated, Judge, that ELN Trust -- I agree with you --
19 that this -- these actions are not proper in This Court and
20 that the only thing I can do is go forward with the two
21 parties. That's how we got here; okay? We have a duty, as
22 you know, to assert any compulsory counter claims that we may
23 have against parties arising from the same case or
24 transaction. They came here and said -- they intervened and

1 said, we're protecting our property rights; okay? So we
2 brought those necessary and required claims that we're
3 required to bring against them arising out of that same
4 transaction out of this alleged separate property belonging to
5 the ELN and LSN Trust.

6 So, respectfully, Your Honor, it is absolutely
7 necessary for This Court to hear these causes of action. It
8 is absolutely necessary for This Court to hear them to proceed
9 and to make the orders that it intends to make. Dismissing
10 the third party complaint is not going to make things more
11 convenient for these parties. It is not, as they argue, going
12 to limit the attorney's fees, limit the time of cost. It is
13 just going to further complicate matters. Everything
14 involving these two parties and this trust and this trust
15 should be heard in this courtroom, not five or six different
16 legal actions.

17 I don't know if The Court would like me -- with that
18 being said, to get into the other causes of action that they
19 requested that we dismiss or be dismissed. I think that we've
20 made it pretty clear in all of our documents.

21 THE COURT: I read all 15 claims and --

22 MR. LUSZECK: Right.

23 MR. SOLOMON: It's our motion to dismiss, Your
24 Honor.

1 THE COURT: -- in detail.
2 MR. LUSZECK: Right.
3 MR. SOLOMON: I know that you let him go first
4 because your inclination. But --
5 THE COURT: Oh, yeah. I was thinking of it as third
6 party kind of got -- yeah.
7 MR. SOLOMON: Can we --
8 THE COURT: Absolutely.
9 MR. SOLOMON: -- restrict this argument at least to
10 --
11 MR. KARACSONYI: To your specific --
12 MR. SOLOMON: To the jurisdictional issue first --
13 THE COURT: Yeah. Yeah. And then --
14 MR. SOLOMON: -- before we move --
15 THE COURT: Yeah.
16 MR. SOLOMON: Because if you decide that, we don't
17 need to argue the other.
18 MR. DICKERSON: Fifteen to thirty seconds at most.
19 My biggest concern -- I agree with everything you said with
20 respect to what you can do in this case. My biggest concern
21 is that you enter an order compelling Mr. Nelson to do
22 something and we're going to have a trust and the distribution
23 trustees thumbing our nose at us and say, you can't compel us
24 to do anything. And that's what my biggest concern is, and

1 that's why they need the (indiscernible) and need to be -- who
2 are main party.

3 And, quite frankly, Judge, if you ever have any --
4 any hope of getting this case settled without going on the
5 other two weeks of trial, these people need to be involved.
6 They absolutely need to be involved because otherwise --
7 because we are going to be litigating elsewhere and they are
8 going to be thumbing their nose at us.

9 THE COURT: Thank you.

10 MR. SOLOMON: Thank you, Your Honor.

11 I don't think Your Honor contemplated removing us --
12 the trust totally out of the case. So I'm not sure I
13 understand Mr. Dickerson's comment, and certainly we don't
14 contemplate that even if The Court proceeds along its
15 preliminary indication. We're still on this case with respect
16 to the issue of community property.

17 As I said, we brought this motion to dismiss or
18 strike because there are some serious jurisdictional issues
19 with respect to where we are, and there's the public policy
20 issues that Your Honor has already addressed in the
21 preliminary comments, and I'd like to go through both of those
22 if I can.

23 It's our position that for no reason -- no reason
24 necessary to decide the issues in this divorce. Lynita

1 attempts to assert probate and civil court claims into this
2 proceeding, not only against the ELN Trust but as Your Honor
3 has observed, also against four new individuals who have had
4 nothing to do with this divorce proceeding. That would be
5 Lana Martin, Noah Harbor (ph), Rochelle McGowan and Joan
6 Ramos.

7 The only issue for which the ELN Trust is
8 legitimately involved in this divorce is The Court's
9 determination of whether the trust has any community property
10 belonging to Lynita. Gladys Baker Olsen Family Trust case in
11 the Nevada Supreme Court tells us that by taking the position
12 that Lynita did, that the trust has her community property.
13 Lynita was required. Lynita was required to join the trust as
14 a party. Otherwise, any order that came out of this divorce
15 that affected the trust's interest in the claim property was
16 void. Lynita's counsel can complain all they want to about
17 Eric's alleged shifting positions over this divorce case or in
18 this divorce case, but she cannot escape the fact that her
19 community property claim to the trust assets required her to
20 join the trust.

21 Now we acknowledge, Your Honor, that such a claim by
22 Lynita can be properly asserted outside probate court and in
23 this divorce. We acknowledge that because the law would say
24 that is a issue concerning -- not concerning the internal

1 affairs of a trust. However, claims as to whether the trust
2 is properly formed, whether it operates in accordance with law
3 and its trust instrument, whether the trustees and advisors
4 breach their fiduciary duties, that is known as an issue with
5 respect to the internal affairs of a trust.

6 Lynita's claim for community property arises outside
7 of the internal affairs in the workings of a trust. She's
8 saying, I have a claim entity trust that some of your assets
9 belong to me, they're my community property. That's an
10 outsider looking in saying, I want the property out of there.
11 That's okay in This Court. And Olsen tells us I had to be in
12 here because her claim affects my interest. And if The
13 Court's going to adjudicate that fairly, I have to be here.

14 Here, Lynita can win her community property claim
15 against the trust if she can prove that her community property
16 was moved into the trust without her consent, or even based on
17 her consent if she can prove that Eric moved this under --
18 into here under some enforceable side agreement, or because he
19 fraudulently induced her to move her separate property in
20 here. Those are all legitimate claims here, Your Honor. We
21 understand that. But Lynita's alter ego and sham trust claims
22 and claims for breach of fiduciary duty and aiding and
23 abetting and conspiracy to commit fraud and breach of
24 fiduciary duty are not necessary to be decided in this case

1 and are outside of This Court's jurisdiction.

2 Let me say why they're not necessary to be decided
3 here first. They're not necessary to be decided here because
4 invalidating the ELN Trust and are holding five individuals
5 liable for damages will not have any effect -- any effect upon
6 the issue of whether Lynita has a community property interest
7 in the trust assets. If those assets -- those assets are not
8 going to become magically community property just because a
9 trust may be invalidated. If it was separate property going
10 into the trust, Your Honor, if it comes out of the trust or
11 the trust doesn't exist, it's still separate property.
12 Invalidating the trust doesn't change that result. It's not
13 necessary for a court's decision here.

14 Holding the ELN Trust to be void or non-existent
15 will not enhance or change in any respect whether it holds any
16 of Lynita's community property and any award This Court may
17 find based upon them being able to make that showing. Equally
18 clear, Your Honor, it is wholly unnecessary for This Court to
19 address whether Ms. Martin, Ms. Harbor as distribution
20 trustees or anyone else for that matter breached duties to
21 Lynita regarding either the LSN Trust, which they have
22 asserted, or the ELN Trust in order to resolve any of the
23 community property claims The Court has in front of it. It's
24 just immaterial to it.

1 I also say it's without The Court's jurisdiction.
2 This Court simply does not have jurisdiction under our court
3 rules and statutes to hear those claims notwithstanding
4 Landreth two. And it has nothing to do with the argument you
5 just heard from Counsel. In connection with part 4 of the
6 Eighth Judicial District Court rules, NRS 164.015 subsection 1
7 and NRS 30.060 give the probate judge the exclusive authority
8 to hear contested matters arising under Titles 12 and 13 of
9 the NRS, at least until she or he allows it to be randomly
10 reassigned to a civil trial judge. And I'm quoting the rule.

11 Quote: (Reading from document) Other than a trial
12 judge serving in the Family division. Close quote.

13 That's EDCR 4.16(a).

14 THE COURT: It doesn't say that it may be heard by
15 the probate commissioner subject to being assigned to a civil
16 court judge other than a Family Court judge.

17 MR. SOLOMON: Yes.

18 THE COURT: So it may --

19 MR. SOLOMON: Actually, it's a three-pronged thing.

20 THE COURT: -- (indiscernible).

21 MR. SOLOMON: It says, first, you start with probate
22 judge. And then --

23 THE COURT: It says, may. It doesn't say it's --

24 MR. SOLOMON: -- she has exclusive authority to get

1 it down to the probate commissioner if she wants to.

2 THE COURT: Right.

3 MR. SOLOMON: Or she can random -- have it go out
4 for random reassignment.

5 THE COURT: Random assignment so there's no
6 (indiscernible).

7 MR. SOLOMON: Any other district judge other than
8 the one sitting in the Family Court.

9 The Supreme Court of Nevada in numerous cases, Your
10 Honor, has held that rules like these, District Court rules,
11 have the exact same force of law as a statute, and it is in
12 excess of a District Court's authority not to follow a
13 mandatory rule. And it doesn't -- it doesn't matter -- what
14 we're really saying is This Court is a district judge. We
15 have no doubt about that.

16 THE COURT: Thank you, Counsel. It's nice to be
17 acknowledged.

18 MR. SOLOMON: And you have a lot of authority. But
19 the Supreme Court has the authority to make rules, under the
20 Constitution, direct authority under -- and they did. They
21 approved of these rules.

22 THE COURT: That's how I ended up in juvenile by the
23 way. The Supreme Court told me I was coming over to do
24 juvenile. So they understand they --

1 MR. SOLOMON: I understand.

2 THE COURT: -- have authority over me.

3 MR. SOLOMON: And those rules under our law have the

4 same force of law as a statute. And if -- and they bind The

5 Court. They bind the parties. They also bind The Court. And

6 case after case of Nevada Supreme Court says so. One is at --

7 it's an old case but it's probably the genesis of the rule.

8 It's been cited a hundred times in Nevada. It's called State

9 Ex Rel Williams vs. Second Judicial District Court, 48 Nev.

10 459 (1925) case.

11 In that case --

12 THE COURT: From our buddies up in Washoe.

13 MR. SOLOMON: Yeah.

14 THE COURT: I'm familiar with the case.

15 MR. SOLOMON: That's exactly right. In that case

16 there was a Washoe rule that said that if you didn't perfect

17 your appeal from the Justice Court to the District Court

18 within a certain time -- or certain way, then it's mandatory

19 to be dismissed. And the District judge said, well that's

20 pretty harsh, so I'm not going to do that. And so he went on

21 a writ of prohibition and the Supreme Court said, hold on,

22 those rules are binding on you, District Court, you can't

23 ignore those even though you don't think they're just. And he

24 issued the writ of prohibition.

1 We got the same thing under Rule 4 in this case.
2 The issues arising under Titles 12 and 13 are those again
3 concerning the internal affairs of a trust. Those are defined
4 by other statutes. In 164.015 subsection 1 they're further
5 defined -- where it says -- by the way, The Court has
6 exclusive jurisdiction, and then when you combine that with
7 Rule 4 you're back to the probate judge. They're further
8 defined in 153.031 which is incorporated by reference into
9 that first statute, and they're further defined in NRS 30.060
10 where it tells you if you wanted to make a declaratory relief
11 with respect to a trust, it has to be brought in a proceeding
12 under Titles 12 and 13, which again, when you add with part 4,
13 it says -- get you right back to the probate judge.

14 And those rules that I just cited would include
15 expressly under the statutes to declare a trust to be invalid.
16 Expressly. That's in 153.031 subsection 1(a). To declare and
17 hold the trustee accountable or liable for breach of trust of
18 fiduciary duties, explicitly set forth in those statutes right
19 back into part 4 because it's Title 12 and 13. To determine
20 any other matter concerning the administration and
21 distribution of a trust. Those are the internal affairs.
22 Those are the claims they're trying to add here unnecessarily
23 that don't need to be decided in this case, and can't be heard
24 here.

1 There's no doubt that the Nevada legislature has
2 Constitutional authority to say certain types of matters shall
3 be heard under specific statutes, such as Chapters -- or
4 Titles 12 and Titles 13. They don't argue otherwise; they
5 can't. Probate's a creature of statute. It didn't even exist
6 to common law. The Supreme Court has express -- express
7 Constitutional authority to adopt rules such as the Eighth
8 Judicial District Court rules to assign District judges to
9 specialized functions, such as hearing probate matters arising
10 under Titles 12 and 13.

11 Admittedly, Your Honor -- and Counsel's pretty
12 bright on the other side, and we've recognized that -- they
13 caught me in a booboo. In my claim I made a mistake. I asked
14 -- all I needed to ask for was the declaratory relief that
15 they don't -- that this is our property and it's not the
16 separate property or community of either side. That's what I
17 should have limited it to. But I have loose language in there
18 that says I want This Court to declare we are valid
19 (indiscernible) trust. That was a mistake, Your Honor. I'm
20 more than happy to strike that. Or if you're going to sever
21 their claims which you have the authority to do, you can sever
22 that one, because that's exactly one of the counter claims
23 I'll be bringing if they ever go forward outside of This Court
24 and file the same type of claims that they've already done.

1 It is neither necessary or proper for This Court to
2 entertain Lynita's claims regarding the ELN or LSN Trusts.
3 They're fiduciaries and they're alleged co-conspirators,
4 aiders and abettors, especially, Your Honor, when it would
5 deprive the latter of their Constitutional right to a jury
6 trial. They say that issue is premature. Well it's premature
7 because we don't have pleadings yet. I mean, once This Court
8 decides -- if it This Court were to decide that these type of
9 legal claims are going forward, I'm assuring Your Honor we're
10 asking for a jury trial, and any one of those parties have the
11 right to do it even if I don't represent them.

12 We'll also be filing a slew of counter claims
13 because we have some of our own in connection with these that
14 would become mandatory, compulsory. And as Your Honor said
15 we're not going to trial soon if that's what's going to happen
16 in this case because this is two and a half years -- almost
17 three years into this case in May I think. And this is like a
18 brand new case with the pleadings aren't even filed yet with
19 respect to these other claims -- brand new.

20 Now, The Court's -- Nevada doesn't have any law on
21 this that I could find. But courts in many other states have
22 recognized that even where the joinder of tort claims with a
23 divorce action is permissible, even when it's permissible
24 under the statutes and rules, is against public policy to

1 require such joinder. So all the compulsory counter claim
2 rules have all been held to be inappropriately applied to that
3 situation because it's against public policy to require such a
4 joinder. And then they go on to say that the administration
5 of justice is better served by keeping tort and divorce claims
6 completely separate.

7 There's a slew of these cases, Your Honor, and I'm
8 not going to bore you with all of them, but it really fits
9 your preliminary -- your preliminary statement. So I want to
10 at least point out a couple of them.

11 THE COURT: This Court's familiar with many cases
12 dealing with domestic violence, torts. Utah, I know, has -- I
13 think Utah says you can go either way. You can -- the judge
14 of divorce court can hear both of them. Other courts -- I
15 don't know if it's California or Texas, says no, you hear the
16 tort separate, then divorce because you have whole different
17 public policy issues, divorce is equity with the torts on
18 that.

19 So I've kind of read several cases across the
20 country. It seems like some say if you want to hear both of
21 them, you could do it. But most of the cases I've read,
22 again, just in with DV to DV tort in the case of divorce on
23 that as I do to the policy and the trial. It seems that's
24 probably best to keep them separate for public policy. So --

1 MR. SOLOMON: Yeah.

2 THE COURT: -- that's been my understanding. But
3 that's just limited to domestic violence torts in a divorce
4 case.

5 MR. SOLOMON: Your Honor's ahead of me again because
6 you hit the --

7 THE COURT: Nevada, I think, says you can hear them
8 either way on that. I've seen them pled a couple times but
9 never really seen them push it in a divorce court. But I
10 think Nevada's one of those that you could hear them both if
11 you thought so, but it's just as to DV. But I'm sorry,
12 Counsel, you can continue.

13 What's that?

14 MR. DICKERSON: (Indiscernible) compulsory counter
15 claim.

16 THE COURT: Yeah. I'm sorry, Counsel, you can get
17 the record.

18 MR. SOLOMON: No problem, Your Honor.

19 THE COURT: I didn't mean to cut you off.

20 MR. SOLOMON: I'm just going to hit a couple of
21 these because Your Honor is right. These are all Supreme
22 Court cases in other jurisdictions, and again, there are a
23 slew of them. I'm just going to touch on a couple of them.
24 One is called Stuart, S-T-U-A-R-T, vs. Stuart. It's 421 N.W.

1 2d 505 out of the Supreme Court of Wisconsin in 1988. And in
2 this case it was I think the type of torts that Your Honor
3 mentioned, assault, battery, intentional infliction of mental
4 distress type torts.

5 And the Supreme Court said at page 508: The court
6 of appeals then discussed whether policy -- by the way, they
7 previously ruled that doctrines of res judicata does not bar
8 tort action because the divorce and tort actions lack an
9 indemnity of cause of actions or claims. So they dismiss the
10 concept that those are compulsory counter claims. In the case
11 they say: The court of appeals then discuss whether public
12 policy requires the wife to join her tort action and the
13 divorce action.

14 The court of appeals aptly stated the factors to be
15 considered in deciding this question and correctly concluded
16 that all the joinder of an interspousal tort action and a
17 divorce is permissible. It is contrary to public policy to
18 require such joinder. It says, although joinder is
19 permissible, the administration of justice is better served by
20 keeping tort and divorce actions separate. Divorce actions
21 will become unduly complicated if tort claims must be
22 litigated in the same action. A divorce action is equitable
23 in nature and involves a trial to the court.

24 On the other hand, the trial of tort claim is one at

1 law and may involve, as in this case, a request for jury
2 trial. Resolution of tort claims may necessarily involve
3 numerous witnesses and other parties such as joint tort
4 feasers, insurance carriers whose interests are at stake.
5 Consequently, requiring the joinder of tort claims and a
6 divorce action could unduly lengthen the period of time before
7 a spouse could obtain a divorce and result in such adverse
8 consequences as to delayed child custody and support
9 determinations. The legislature did not intend such a result
10 in enacting the divorce code.

11 And I submit that's the same in Nevada. And I won't
12 unduly burden this, but just one more case. Ward vs. Ward,
13 the Supreme Court of Vermont this time, 583 A 2d at 577 (1990)
14 case. And these were claims and counter claims for torts
15 against each others' -- again, assault and battery type
16 claims, emotional distress claims. And the -- at page 581 of
17 this opinion says:

18 (Reading from document) Finally, the relevant
19 policy considerations weigh heavily against combining tort
20 action with the divorce. If we combine these claims it will
21 be difficult to protect the right to trial by jury while
22 providing expeditious relief in the divorce action.

23 If a jury trial had been requested in this case on
24 the tort claims or counter claims, we would have had to delay

1 resolution of the divorce proceeding with its claims that the
2 domestic violence between the parties should be considered in
3 determining the property disposition until after the tort
4 actions were tried to a jury. The delay could be intolerable
5 especially if the custody and visitation of children were
6 involved. The better policy is to keep the actions wholly
7 separate and resolve the divorce proceeding as expeditiously
8 as possible. We note that better recent cases from other
9 states have reached the conclusion that marital tort claims
10 may not be joined in on the divorce action (end).

11 It goes on to discuss the Utah case which Your Honor
12 is aware of, Colorado cases, Arizona cases and concludes that,
13 even where courts have found the joinder is technically
14 possible, they have usually discouraged such joinder.

15 Your Honor, NR -- I'm sorry -- NRCP 21 -- although
16 it's titled, Misjoinder and Non-joinder Parties, it covers
17 both joinder parties and claims if Your Honor recalls. And it
18 specifically authorizes This Court -- and I quote:

19 (Reading from document) Even on of its own
20 initiative at any stage of the action to add or drop parties
21 and to sever any claim against the party to have it proceeded
22 with separately (end).

23 And the case of Cummings vs. Charter Hospital of Las
24 Vegas at 111 Nev. 639 at page 645 (1995) Supreme Court case --

1 Nevada Supreme Court says This Court has broad discretion in
2 wielding its authority under NRCP 21. So even if there were
3 compulsory, The Court could do that. I mean -- and they're
4 not. And for the policy reasons that This Court has already
5 expressed very succinctly in its preliminary observations and
6 for the reasons set forth in the cases I read to The Court,
7 even if This Court thought it had jurisdiction to hear these,
8 it shouldn't. It should sever them out and let these parties
9 get divorced.

10 In response to your question, if this case -- if you
11 do what you suggested your inclination was, we're left --
12 we're still in the case as the trust, and we're left with
13 whether the trust has any community property. And just as I
14 informed Your Honor before, I only need (indiscernible)
15 deposition I think, a couple experts and we're ready to go.
16 If you leave these claims in -- I don't know what we're doing.
17 You're going to have to find a courtroom with a jury panel,
18 number one. We're probably going to run a writ. And that's
19 not a threat, Your Honor. Please understand that. It's just
20 based on our genuine belief The Court doesn't have
21 jurisdiction.

22 THE COURT: You got to do what you got to do. I
23 respect that.

24 MR. SOLOMON: Yeah. We just don't think The Court

1 has jurisdiction under the court rules and the way the Nevada
2 legislature and the Supreme Court of Nevada come together to
3 process internal affairs of trust questions. And it's not
4 necessary. It's just not necessary to reach those issues in
5 this case. There -- nothing This Court could do is going to
6 prejudice their ability to pursue those claims that they want
7 to outside of This Court. Nothing The Court's going to do is
8 going to prejudice our ability to file counter claims and to
9 duke it out in probate court and/or civil court or in a
10 consolidated version of both of those. But this case will be
11 over. The parties will be divorced and public policy of
12 Nevada will be served.

13 And for those reasons we think our motion to dismiss
14 should be granted.

15 THE COURT: Thank you.

16 I'll get a little bit of (indiscernible), Counsel,
17 and then I'll give you some reply. Since it was your motion
18 you should be the one getting rebuttal --

19 MR. SOLOMON: I appreciate that, Your Honor.

20 THE COURT: -- on the circumstances. I'll give them
21 some rebuttal, and I'll give you a chance to reply on this
22 since you should have gone first (indiscernible).

23 MR. KARACSONYI: I'm going to hit the subject matter
24 jurisdiction argument first because I think it's probably the

1 best supported. The statutes they're referring Your Honor to,
2 as you pointed out, or the EDCR you pointed to, is a
3 discretionary EDCR that allows for the distribution or
4 assignment of cases to certain departments. But it has
5 nothing to do with subject matter jurisdiction. Subject
6 matter jurisdiction is the ability to hear certain types of
7 cases. This has nothing to do with it. For them to continue
8 making that argument, it's just insincere.

9 Now, the NRS's they cite to that they say are
10 mandatory and provide exclusive jurisdiction, NRS 164.015,
11 petition concerning internal affairs of non-testamentary
12 trusts, jurisdiction of court, procedure of (indiscernible),
13 final order appeal. The Court has exclusive jurisdiction of
14 proceedings initiated by the petition of an interested person.
15 Now, what is a court? As they point out, a court is defined
16 in Chapter 132.116. District Court and court defined:

17 (Reading from document) District Court or court
18 means a district court of this state sitting in probate or
19 otherwise adjudicating matters pursuant to this title (end).

20 This statute doesn't say, not that the legislature
21 could as we already pointed out for this is clear from the
22 Landreth case, but this statute doesn't say this case -- this
23 type of case must be heard by a probate judge or somebody
24 designated a probate judge. This statute just simply says

1 that a district court sitting in probate or hearing probate
2 matters is the court that we're referring to throughout this,
3 whether or not there's somebody -- a district court was
4 specifically assigned for distribution and case management
5 reasons of probate matters.

6 So none of this provides any authority or support
7 for the argument they're making. The law is clear. Landreth
8 is clear. The legislature couldn't prescribe the powers of
9 the District Court. The Nevada Constitution provides you your
10 powers. In the response they put, Judge, not any District
11 Court judge has the right to hear probate matters. But the
12 Supreme Court said, if any District Court judge, meaning Judge
13 Hardcastle, Judge Ritchie, whoever, has the power -- or Judge
14 Cadish, has the power to hear probate matters, so do you.
15 You'll recall that at one point Judge Ritchie became the chief
16 judge of the Family Court -- or of the District Court.

17 THE COURT: And Judge Pollock, from my
18 understanding, is the backup probate judge for Judge Gonzalez
19 or whoever's doing it downtown. I believe Judge Pollock has
20 been designated as a backup to do the probate judge as needed
21 to help out as to help out their overflow.

22 MR. KARACSONYI: Exactly, Your Honor.

23 THE COURT: My understanding.

24 MR. KARACSONYI: Judge Ritchie heard the probate

1 calendar.

2 THE COURT: Yeah.

3 MR. KARACSONYI: Right? When Landreth one came out,
4 there was questions, can Judge Ritchie hear the probate
5 calendar, could Judge Ritchie hear the bond calendar. When
6 probate -- when Landreth two came out, it was clear that he
7 could. For them to say that you have no subject matter
8 jurisdiction over these claims is ridiculous. It's as though
9 saying that in federal court, even though your powers are
10 conferred by Article 3, Section 3 of the United States
11 Constitution to hear matters arising in diversity and/or
12 matters arising in -- under the U.S. Constitution that only
13 judge Pros can hear U.S. Constitution cases and only Judge
14 George is going to hear cases of diversity, and then somebody
15 going in to Judge George and saying, you can't hear this case
16 because it arises under the U.S. Constitution. Judge Pros the
17 only one that can do that. Your powers are Constitutionally
18 guaranteed.

19 Now, in Barelli, this issue was addressed. The
20 exact same argument in a different context has already been
21 decided. In Barelli:

22 (Reading from document) In holding that the Family
23 Division of the District Court has such jurisdiction we do not
24 intend to suggest that a District Court of general

1 jurisdiction would be without power to fully resolve these
2 issues if brought before it. Instead we hold that both the
3 Family and the general divisions of the District Court have
4 the power to resolve issues that fall outside their
5 jurisdiction --

6 And really by jurisdiction here they're referring to
7 cases that are just administratively assigned to them.

8 -- when necessary for the resolution of those claims
9 over which jurisdiction is properly exercised. For example,
10 the Family Court has jurisdiction to reach a reformation or
11 rescission claim where family law issues are implicated. And a
12 district court of general jurisdiction has authority to reach
13 a family law issue wherein necessary to resolve a claim that
14 would ordinarily fall within its jurisdiction such as
15 reformation and rescission (end).

16 There's no doubt that This Court has subject matter
17 jurisdiction. But their next argument is, Judge, really you
18 don't have to hear these claims because it has nothing to do
19 with your decision. You can do everything you intend to do
20 without having us here and having us litigate this in a
21 different courtroom. That is completely and utterly
22 incorrect, with all due respect to opposing counsel, because
23 they're telling you that now.

24 But what is going to happen? Ask them. How are we

1 going to decide that this property is community property? He
2 says, well you can say, Judge, that she moved it, that they
3 moved it in without her consent into the ELN Trust under a
4 side agreement, or that he fraudulently induced her, which by
5 the way are all bases of the claims that we brought before you
6 and they acknowledge valid claims.

7 THE COURT: Claim (indiscernible) I think is -- does
8 your (indiscernible)?

9 MR. KARACSONYI: Yeah, fraudulently inducement.

10 THE COURT: Fraud and inducement.

11 MR. KARACSONYI: Breach of oral agreement; okay.

12 THE COURT: They contend; yeah.

13 MR. KARACSONYI: Fraud, deceit, misrepresentation.
14 Those are all claims that we brought against Eric
15 individually, by the way, along with our breach of fiduciary
16 duty claim which is against Eric individually which are
17 compulsory counter claims that arise out of their marital
18 relationship. And The Court has already held, the Nevada
19 Supreme Court, that there is a fiduciary duty owed between
20 spouses and (indiscernible) be considered in these types of
21 cases.

22 But here is their argument. Let's say you reach
23 those findings, okay? You find that he moved it in without
24 her consent or they moved it in under a side agreement or they

1 fraudulently induced her. What happens next? This is the
2 part they're not telling you. The next thing that happens is
3 the trust says, Your Honor, you'll see here under 166.170(1)
4 that a person may not bring an action with respect to transfer
5 of property to a spendthrift trust if the person is a creditor
6 when the transfer is made unless the action is commenced
7 within two years after the transfer is made.

8 THE COURT: This is the whole purpose of spendthrift
9 trusts is to --

10 MR. KARACSONYI: Right.

11 THE COURT: -- protect assets from creditors --

12 MR. KARACSONYI: As long as our --

13 THE COURT: -- within two years.

14 MR. KARACSONYI: -- spendthrift trust is valid, your
15 hands are tied, Your Honor. We -- as long as we have a valid
16 spendthrift trust, it doesn't matter that if he fraudulently
17 induced or that he did all these things, you can't touch our
18 property. You are not entitled to touch our property. And,
19 by the way, Judge, there's another action proceeding down the
20 street in another District Court that's the same as yours
21 about this issue. And only once a decision's rendered there
22 could you make any orders affecting this property.

23 So then how are we going to say that hearing those
24 claims is not necessary to the adjudication of exactly what

1 you're trying to do. They also say that if you ruled on the
2 alter -- that the claims we brought have nothing to do with
3 anything. They won't do anything. They won't accomplish
4 anything. Alter ego wouldn't accomplish anything. If you
5 find this to be his alter ego, then you find that the property
6 is held by him, that this is just a mere sham, then property
7 held by Eric obviously and necessarily is subject to division
8 by This Court. This claim is absolutely necessary.

9 They say they'll be deprived of their right to a
10 jury. Under 78.747, Your Honor, the statute dealing with
11 findings and factors for an alter ego, I want to read to you
12 that statute.

13 THE COURT: It's under corporations NRS 78?

14 MR. KARACSONYI: Yes, Your Honor. And I'll get to
15 in one brief second why that should be applied and why that's
16 the standard in this case that I think was very clear in our
17 papers.

18 Number three:

19 (Reading from document) The question of whether a
20 stockholder, director or officer acts as the alter ego of a
21 corporation must be determined by The Court as a matter of law
22 (end).

23 They're not entitled to a jury. This is a legal
24 question for you to decide and you alone, just the same as

1 their divorce action is a legal action for you to decide to do
2 alone and they're not entitled to any right to jury. Now,
3 they say 78.747 doesn't argue -- or doesn't apply. Here was
4 the argument, Judge. Remember the first argument. The Court
5 -- there's no claim -- there's no claim for alter ego
6 cognizable in the state of Nevada against a trust. What did
7 we say? Here's the statute, Judge. It says clearly, alter
8 ego. They said, you know what, alter ego is cognizable, Your
9 Honor. But you can't apply 78.747 because that doesn't
10 specifically apply to this alter ego claim. And, by the way,
11 the legislature hasn't given you any guidance of what would
12 make a trust an alter ego under the NRS.

13 As we pointed out, necessarily you have to apply the
14 statute. We can't assume that the Nevada legislature enacted
15 a statute that provided that a trust can be an alter ego
16 without any guidance or intent -- any guidance as to what
17 would make the trust an alter ego or any consideration -- and
18 with the intention that you wouldn't apply the only statute on
19 point, the only law on point, 78.747.

20 THE COURT: And I will notice that with the new
21 thing with the LLC's. When they came out there was no issue
22 as could you do alter ego in an LLC like you did with
23 corporations. I know most of the courts that ruled that,
24 specifically Wyoming, who set up the LLC's. The Supreme Court

1 said they applied the same principles of alter ego to LLC's.
2 So your argument here is that they would apply the same
3 principles to trust as they would on corporations.

4 MR. KARACSONYI: Exactly.

5 THE COURT: And then the legislature would follow
6 the case law and say, do we need this legislature.

7 MR. KARACSONYI: Exactly. And not only with LLC's,
8 but we pointed to two specific cases where they examined their
9 trust alter ego. Now, mind you, in the states where we
10 pointed to, which were California and, I believe, let's see --
11 California and Montana -- or Missouri -- western district of
12 Missouri. In those states they don't even have laws that say
13 a trust can -- an alter ego doctrine can be applied to trusts.
14 But what did the courts do there? They took the corporate
15 statute and they applied it to trusts. Here, the court says -
16 - here the Nevada legislature says alter ego can apply to a
17 trust and we will -- and obviously we should look to the
18 corporate statute.

19 Now, the other thing they bring up is the right to a
20 jury trial. I've already pointed out under the alter ego
21 claims, they have no right to a jury trial. We haven't
22 briefed the specifics of each and every action of whether
23 there's a right to a jury trial. But look back to the Barelli
24 case. Look at the Landreth case. You have the same powers.

1 You can empanel a jury. If a criminal case gets wrongfully
2 assigned to you under the administrative and procedural rules
3 of this court, you have every bit of right under the Landreth
4 decision -- it says, even in error, take care of that case.
5 Of course you have the right to empanel a jury. This issue
6 was even brought up in the Barelli case.

7 (Reading from document) In the Barelli case next,
8 Madeline (ph) claims that she was erroneously deprived of a
9 jury trial under claims for contract damages. NRS 125.070
10 provides that the judge of the court shall determine all
11 questions of law and fact arising in any divorce proceeding
12 under the provisions of this chapter. The Court granted
13 Anthony's motion to strike Madeline's demand for a jury trial
14 because the contractual claim arose out of the marital
15 relationship and the right to a jury -- trial by jury has
16 eliminated domestic proceeding. Madeline argues that this is
17 not a domestic proceeding but rather an action seeking money
18 damages for breach of contract and fraud. Again, we agree
19 with the District Court that this is an action attempting to
20 resolve the marriage because they attempted to rescind the
21 marital agreement between the parties and award alimony and
22 community property under NRS Chapter 125. Further, because
23 resolution of the reformation and rescission issue was dependent
24 upon whether the existence of the oral contract had been

1 proved, the Family Court's determination that no contract
2 existed barred the damage claim. Therefore, under NRS 125.070
3 Madeline was not entitled to a jury trial (indiscernible)
4 cause of action (end).

5 This not only stands for the proposition that they
6 may not be entitled to a jury trial on such actions, but it
7 clearly recognizes that where you brought a claim that may be
8 subject or The Court has examined that -- or said that she
9 wasn't entitled to a jury trial on those claims. If she had
10 though, this doesn't say that The Court couldn't empanel a
11 jury. And under Landreth that is clear that The Court could
12 empanel a jury. Okay?

13 They filed the exact claim for declaratory relief.
14 They now claim it's in error. There is absolutely no doubt
15 that This Court has to hear these claims in order to decide
16 the community property issues before it. If you strike these
17 claims, if you strike the claims for alter ego, if you strike
18 the third party claim, then as we pointed out, there is -- you
19 may enter orders. You may say that the property belongs to
20 Lynita, but you're going to have them in here fast forward --
21 fast forward several months from now telling you, sorry,
22 Judge, there's nothing you can do.

23 This is absolutely necessary. It has to be
24 considered under Barelli. There's no doubt that you have

1 subject matter jurisdiction, and we ask that you proceed with
2 these claims and then let us get into the specifics of the
3 other claims.

4 THE COURT: Thank you, Counsel.

5 MR. SOLOMON: Thank you, Your Honor.

6 Let's get the point that Counsel did rather than
7 rehash anything. He points to 164.015 and says, hey that just
8 says court. But he forgets to realize that it's Title 13 that
9 that's contained in. And then when you go back to part 4
10 which he now says is discretionary -- it says the rules of
11 part 4 govern the practice and procedures of all proceedings
12 under Titles 12 -- of NRS and all of Title 13 of NRS except
13 chapters 159, 160 and 161. Does that sound discretionary?
14 Does it also sound discretionary when it says, all other
15 contested matters pertaining to the probate calendar will be
16 assigned on a random basis to a civil trial judge other than a
17 trial judge serving in the Family Division.

18 The reason Judge Ritchie didn't violate that rule,
19 Your Honor, is he was a probate judge. He fit under the first
20 sentence of the rule. And that doesn't disqualify any
21 District judge from hearing that -- from being a probate
22 judge. It's in harmony with that rule, not contradicted by
23 it. Your Honor, you could hear this if you were the probate
24 judge. I mean, there's no question about that. But you're

1 not, and that's what the rule says.

2 Unlike Barelli, it's not necessary to decide that
3 tort claims and decide the issues here, Your Honor. It's
4 totally unnecessary, and I'd just be repeating my opening
5 argument if I went through that again.

6 THE COURT: Couldn't I just have the probate judge
7 appoint me as a probate judge like they did with Pollock? I
8 mean, in the interests of keeping everything under one judge
9 and to expedite matters -- I mean, theoretically speaking, I'm
10 sure I can contact the judge probate and say, can you
11 designate probate judge for the purposes of this hearing, just
12 simply because of the issues and the interests of --

13 MR. SOLOMON: You probably could --

14 THE COURT: -- (indiscernible).

15 MR. SOLOMON: -- except for that thing that -- I
16 mean, if they -- they need to change the rule.

17 THE COURT: Yeah.

18 MR. SOLOMON: But the rule says other than a trial
19 judge or in the Family Division.

20 THE COURT: Yeah, Judge Pollock I know is the
21 probate judge -- backup probate judge. And I think it was a
22 phone call and they said, you guys help us out a little bit.
23 So --

24 MR. SOLOMON: Yeah, I mean, if --

1 THE COURT: I'm not -- I'm saying (indiscernible).

2 MR. SOLOMON: Designate you as a probate judge,
3 maybe you would -- you wouldn't violate that rule. But that's
4 -- you know, but --

5 THE COURT: Neither here nor there. It doesn't deal
6 with the real issue.

7 MR. SOLOMON: That's what it says, Your Honor.

8 MR. KARACSONYI: (Indiscernible) controls over that
9 rule anyways, Judge. We -- they've already conceded you have
10 subject matter jurisdiction --

11 THE COURT: We'll let --

12 MR. KARACSONYI: -- that say you couldn't
13 (indiscernible).

14 MR. SOLOMON: You know, Counsel, if you don't mind,
15 let me argue.

16 THE COURT: Yes, why don't you let -- why don't you
17 let Mr. Solomon finish.

18 You can continue, Counsel. I was raising a point on
19 that. There's other ways to get around it if they did on
20 that, but I wouldn't -- I wouldn't stoop to that level yet.

21 MR. SOLOMON: Barelli didn't involve specific court
22 rules that says the probate court has the exclusive
23 jurisdiction to hear a matter under its auspices.

24 With respect to the alter ego, there's no doubt an

1 alter ego claim exists in Nevada. We never said it otherwise
2 despite how Counsel likes to twist what we said in our motion
3 to dismiss. We said it doesn't lie under NRS 78, and it still
4 doesn't lie under NRS 78. We recognize that such a claim
5 could exist. We recognize that there's a very specific
6 legislative intent with respect to self settled spendthrift
7 trust. The policy, Your Honor, is state of Nevada wanted to
8 make self settled spendthrift trust a very special creature in
9 order to attract trust business to the state of Nevada.

10 There are a slew of special statutes that relate to
11 those type of trusts including ones that go on in multiple
12 sections and says that you can't prove that it's an alter ego
13 just because it has one of these many factors or all of them
14 in combination. It is the norm in self settled spendthrift
15 trusts in Nevada that the settler is the managing trustee for
16 example with complete control over and domination of the
17 affairs of the trust. That's the norm, and it's statutorily
18 authorized. And you could never apply NRS 78 by analogy to
19 that, and the cases that they rely on don't -- come from
20 jurisdictions that don't have a self settled spendthrift trust
21 statute and don't have a legislative pronouncement as to what
22 the factors are that cannot be considered.

23 The only factor in Nevada that you can't reserve to
24 the settler in terms of power under a self settled spendthrift

1 trust is the decision of whether or not to make distributions
2 to himself or herself. That has to be done with a discretion
3 of an independent party variously known as a distribution
4 trustee or independent trustee. And they can say yes to every
5 single time that the -- that the managing trustee of the
6 settler asked for, and it's not proof of domination and
7 control under our statute.

8 You're talking apples and oranges with respect to
9 that. But it doesn't matter, Your Honor, because the statutes
10 in Title 12 and Title 13 say that the validity of a trust is
11 an issue that arises under Titles 12 and 13, and part 4 says
12 that has to be heard by the probate judge or another civil
13 judge other than one in Family Court to whom it's assigned or
14 the probate commissioner if he assigns it that way.

15 I -- all trust cases are equitable cases, Your
16 Honor, so there isn't a right for jury trial -- and we don't
17 say there is. So I don't know where he's trying to go when he
18 says, hold on, internal affair questions, you're not entitled
19 to a jury trial anyway.

20 THE COURT: (Indiscernible) raised anything when you
21 talked about the torts and the divorce action being separate
22 because of the public policy of those courts saying about the
23 right to jury trial and tort cases.

24 MR. SOLOMON: Absolutely.

1 THE COURT: I think --

2 MR. SOLOMON: But what he forgot, Your Honor, is --
3 in his statement is that isn't where they stop. They have a
4 slew of fraud and conspiracy and all sorts of claims where
5 they're asking for monetary damages. Those are clearly
6 illegal claims, clearly, and they invoke the right of a jury
7 trial. And Barelli doesn't say otherwise. It says that the
8 way The Court disposed of the issue got rid of the legal claim
9 --

10 THE COURT: (Indiscernible.)

11 MR. SOLOMON: -- and therefore you didn't need the
12 jury trial, not that if you have a legal claim you don't get a
13 jury trial.

14 THE COURT: But they could empanel it if they had a
15 legitimate claim that the Family Court could empanel.

16 MR. SOLOMON: I don't know that that's not true. If
17 you have room for it, I guess you can. You go fight with the
18 boys downtown over court space.

19 THE COURT: Room 9. We'll just steal Courtroom 9.
20 That's got jury seats.

21 MR. SOLOMON: Contrary to the arguments, there is --
22 if we're a party and The Court issues a ruling, it's res
23 judicata on us. It's fully binding on us, and we'll comply
24 with it. To say otherwise is sort of disingenuous. This

1 Court has jurisdiction over the trust with respect to the
2 proper issue of the issues outside the internal affairs of The
3 Court, and that clearly includes whether or not any of the
4 community property in our trust -- or if there's any community
5 property in our trust. And This Court has the full panoply of
6 powers to deal with that issue, and we don't dispute it and
7 never did and won't.

8 THE COURT: Thank you, Counsel.

9 I do appreciate everybody's argument as I wanted to
10 kind of focus it on the concerns for The Court. I am going to
11 just argument -- do a little more research on some of the
12 cases cited. I'll be honest right now as to subject matter
13 jurisdiction I'd be inclined to think I could entertain all of
14 it. I think the real question is should I. And I think --
15 and the other side.

16 So I'm inclined on your side with the jurisdiction
17 issue. The issue I'm really sure -- but the issue what do I
18 need to step in, internal or external, I'm not really inclined
19 to get into breach of fiduciary duties by Nola and everybody
20 else on that. I'm more worried about Eric and Lynita and how
21 it came to play to arrangement on that with the property,
22 where the property came from, how the decisions were made on
23 that because I agree that just because one party says it's
24 community separate doesn't mean that's what it is. You look

1 at it and see the character of the property and see where it
2 goes.

3 It's the same token. I've been trying to make it
4 clear from day one I'm going to do what's fair and just by
5 these couple. I'm going to consider a 28-year marriage and
6 people can do what they want to do. I'm going to consider
7 that we do what Ms. Nelson gave up by staying home doing that
8 so Mr. Nelson can pursue his vocation which he's very good at.
9 He's a very good businessman. I respect that. I know exactly
10 from the testimony so far which may change subject with the
11 testimony, who made all the decisions, who was running the
12 show, and this was akin to an innocent spouse thing. If
13 you're doing income tax evasion same thing signed, trust that
14 the person did that and make sure that we do right and fair
15 and just under equity with a 28-year marriage.

16 With that said I am bound by the law, of course, on
17 that. But there's other ways to get to fairness and equity in
18 a divorce case, and I intend to get there with the application
19 of the law. How I need to get there with the trust and stuff,
20 I do respect that, but the issue it is what it is. I'm not
21 inclined to step in all this and make this into a nine week
22 trial on breach of fiduciary duties by Nola and
23 (indiscernible) and everyone else.

24 I think this thing that they're being brought into

1 this is unfortunate. I think they're doing what basically
2 Eric -- they worked for that, became involved in that and
3 Eric's family has been intimately involved in all these cases.
4 They got themselves put there, but I think it's really between
5 Eric and Lynita, what was done, how it was done and the issues
6 on that. And, again, we've had six days of trial testimony.
7 That testimony won't change. Other people may do it, but I've
8 got the testimony under oath of all the parties.

9 Attorney Jeffery Burr has testified in detail since
10 he's the one that did the trust on that. I know Counsel said
11 some of the right questions were not asked and I respect that
12 as far as the legality of the trust and saying that it was a
13 sham and things like that that the right questions were not
14 asked. I do notice with some of the third party claims as far
15 as the alter ego and issues that I was looking at that. I'm
16 not sure if I need to open up all those claims in order to go
17 there. I'm thinking I can do that in a regular testimony
18 between the parties.

19 As to the alter ego as far as -- or the inducement
20 how they got there, I'm not sure if I need to keep those
21 claims open. I can make those findings in my property
22 distribution. I'm not sure yet, but I did highlight the alter
23 ego claims on that and also the inducement to see how we got
24 there. So I did have stars by them that say, can I get that

1 without opening up a third party complaint with everybody
2 coming there and bringing all these parties in. And I wasn't
3 sure how I need to get there, but the real issue is to keep
4 this between Eric and Lynita and not bring everybody else in
5 who I think was brought in as employees and things like that.

6 They were doing what they were doing. I didn't see
7 that they necessarily were involved in any of the really inner
8 workings. They were just doing what they do as an employer
9 and agent of Eric, and that's what I need to get to. So I'm
10 trying to keep it between you two and not drag all these other
11 parties into it. I know the harm's already been done because
12 I'm -- from the last hearing on that with the kids involved
13 and why is Ms. Nola coming in -- or Auntie Nola brought in.
14 So, I mean, just a mess.

15 So you guys need to get divorced. You need a
16 decision on the property. My issue is to make sure that the
17 property of the Eric Trust does not disappear. There was a
18 concern as to where that was going to go. So and I addressed
19 that on my earlier one decision I gave today which was -- just
20 dealing with the money for the sale of the dynasty. That
21 money wasn't broader. I'll see what I need to do to make sure
22 nothing disappears until we get this matter resolved.

23 The problem with the case on that is until we sit
24 there and say that everybody's going on business as usual, so

1 there's no incentive to sit there and say let's get this thing
2 done. And I intend to sit there and say it's not going
3 business as usual. This Court's going to think on that, and
4 if we need to limit investments I know they're saying that the
5 investments have a normal ordinary course of business. I do
6 recognize that, but in this case I don't think I would
7 necessarily found it in the ordinary course of business,
8 because I see it as kind of paying expenses. Like if you got
9 expenses coming in, inventory, you're doing that. I'm not
10 sure investment, while that is the goal of it, with the
11 pending divorce if that's the right way to go to determine
12 with the nature of that property.

13 So I do not -- so I do intend to maintain over the
14 trust to limit their activity so I get this matter resolved
15 and the property stays there. And if it's -- I think the
16 reports -- we'll hear from Mr. Birch as some issues as your
17 waste that you were talking about, some issues on that,
18 following the money and the contracts or lack of contracts.
19 So I think that helps out. But the real issue is I intend to
20 only go as far as I need to go to resolve this issue between
21 these parties and do a fair and equitable property
22 distribution and not get into all these fiduciary duties by
23 all the other parties that we have, Nola, Lana, Rochelle and
24 Joan, try and keep you guys out of this as much as I can, but

1 also leave that so you could pursue that course of action if
2 you felt you need to go to them.

3 I'm really trying to see between Eric and Lynita
4 what I need to go to get this matter divorced and do a fair
5 and just equitable distribution of property, and the key is
6 the character of the property and the trust for both sides,
7 Ms. Lynita's trust as well.

8 MR. DICKERSON: So you understand the last thing Ms.
9 Nelson wants to do is be litigating with all these people.
10 Unfortunately, Pandora's Box was opened when the trust came in
11 and filed a complaint (indiscernible).

12 THE COURT: Yeah. And the problem is if you didn't
13 bring them in at the beginning. So --

14 MR. DICKERSON: We have two individuals here,
15 Rochelle McGowan and Joan Ramos who are just named
16 individually and they have no connection as a distribution
17 trust (indiscernible). They were brought in, Your Honor,
18 because of their involvement with signing checks, handling
19 various transactions at their expense. We were brought in
20 because I felt that they would (indiscernible). Ms. Nelson
21 did not want to bring any of these people in. And,
22 unfortunately, from the legal position and particularly
23 looking at what needs to be resolved with respect to all those
24 issues from a legal position, I believe they have

1 (indiscernible).

2 So with respect to those two I can understand your
3 position. With respect to -- with respect to Lana Nelson and
4 Nola Harbor and -- yeah, Lana Martin and Nola Harbor, with
5 respect to those two, both of them had served in the capacity
6 as the distribution trustee. They have (indiscernible) and
7 they acted individually if we're correct on what our position
8 is on what they did and acting under the direction of
9 (indiscernible) against the interest of Lynita, then
10 individually they should be (indiscernible).

11 And so I -- each of these great thought was given
12 to, particularly with the last two which was very troubling.
13 A lot of thought was given with respect to Ms. McGowan and Ms.
14 Ramos as to whether to join (indiscernible).

15 MS. FORSBERG: Your Honor, are we hearing argument
16 all over again? I'm a little confused why Mr. Dickerson's
17 stand up and like re-arguing the whole case.

18 THE COURT: I'll give you some -- I'll give you some
19 --

20 MS. FORSBERG: Ridiculous.

21 THE COURT: Give you some -- you want some response,
22 I'll just give you a chance since we got -- we try and get
23 everybody get stuff out there. I think I opened that door by
24 saying I recognized how the family -- I believe one of the

1 child had said he's already upset because if I remember the
2 one child was very upset why Ms. Nola was brought in. I want
3 to address that because it's a divorce case, and the parties
4 coming in here now are pointing fingers on that. But it cause
5 all that, and that's why we need to get this matter resolved
6 and the litigation can take care of that.

7 But I'm just really worried about getting this
8 matter resolved between these parties, whether it's property,
9 distribute the property, get them divorced and go from that
10 point and only reach as far as I need to reach and not turn
11 this into more litigation than necessary.

12 Did you want to respond to -- since I gave Mr.
13 Dickerson a minute just to --

14 MS. FORSBERG: Your Honor, just a couple things.
15 Ms. Nelson also can direct her counsel. If she didn't want
16 him brought in, she could have advised him. I don't think
17 it's kind of disingenuous for these lovely ladies back here to
18 --

19 THE COURT: She represents Mr. Nelson. But --

20 MS. FORSBERG: If I could have a minute that would
21 be great.

22 THE COURT: Yeah, we'll give you a minute.

23 MS. FORSBERG: You know, it just seems like
24 disingenuous to me at best for these parties to be told this.

1 I mean, I think Ms. Nelson certainly needs to know that she
2 also controls part of her case also and it's not just her
3 counsel. This Court made it clear that both parties have
4 something to add to the case as their case. I don't think Mr.
5 Dickerson falling on the sword is really that helpful with the
6 parties, unless he thinks it's trying to repair some of the
7 relationships that have been irreparably damaged by that
8 (indiscernible).

9 I mean, it's sad like you said already -- the
10 daughter has already got involved because Aunt Nola got
11 brought in, and it is disheartening for children, even adult
12 children, Your Honor. So I just think that we don't want to
13 rehash all the issues again, and I just don't think it's
14 appropriate for him to stand up after.

15 THE COURT: Okay.

16 As far as some housekeeping, I'll be willing to give
17 you a two-week trial right now.

18 UNIDENTIFIED SPEAKER: (Indiscernible.)

19 THE COURT: Did we get it? Did we get the two week?
20 That's all we're going to do at this time. Did we give you
21 two weeks?

22 MR. PROVOST: Two weeks in May you gave us.

23 THE COURT: I did? Oh wow.

24 (THE COURT AND THE CLERK TALK AMONGST THEMSELVES.)

1 Okay. We didn't officially set it. We thought,
2 Bob, are you guys okay with those two weeks?

3 MR. DICKERSON: Oh absolutely; yes.

4 THE COURT: And then depending on this decision --

5 MR. SOLOMON: It depends on The Court's ruling on
6 this motion.

7 THE COURT: -- if anymore discovery -- yeah, if you
8 need more discovery, then we will. But I want to keep this so
9 I didn't lose it. So I keep those two weeks, at least I got
10 it there.

11 MR. SOLOMON: Your Honor --

12 THE COURT: I'm going to take this under advisement,
13 look at your arguments and do a little research on my own and
14 give you guys a decision. We'll contact you to give you a
15 decision because that will interest if you need more discovery
16 depending on like you said.

17 MR. SOLOMON: Of course I'd say that.

18 THE COURT: But I just want to keep --

19 MR. SOLOMON: I mean, they said that --

20 THE COURT: -- those dates while we're wait --

21 MR. SOLOMON: -- right there in their pleading
22 actually that --

23 THE COURT: You indicated that basically --

24 MR. SOLOMON: -- (indiscernible).

1 THE COURT: -- all you need --
2 MR. PROVOST: Yeah, we need to start.
3 THE COURT: Yeah.
4 MR. PROVOST: We just don't know where to start
5 because --
6 THE COURT: Exactly.
7 MR. PROVOST: -- of what -- Your Honor's decision --
8 THE COURT: Absolutely.
9 MR. PROVOST: -- (indiscernible).
10 THE COURT: And this will be -- this will be a week
11 or so. I'm not going to keep it tied up any longer. I said I
12 had my kind of ideas when I came in on that. I wanted to hear
13 argument and look at that.
14 But did we keep those two weeks open in May? I just
15 want to make sure I keep those open, because we talked about
16 it but I didn't officially set it in schedule. But that would
17 work for you guys right now subject, of course, to This Court
18 decision if we need --
19 MR. SOLOMON: Absolutely.
20 THE COURT: -- discovery.
21 MR. SOLOMON: And thank you for your patience today,
22 Your Honor.
23 THE COURT: We just want to get that done.
24 Mr. Birch had a report that he filed. Did you guys

1 get a copy of the report?

2 MR. KARACSONYI: Yes, Your Honor.

3 THE COURT: Did you want to address that now, Mr.
4 Birch?

5 MR. SOLOMON: Do I need to be here for that?

6 THE COURT: I don't know if -- they're going to talk
7 -- I think you're okay with the trust more than dealing with
8 payments to the family and things like that.

9 MR. BIRCH: (Indiscernible) Your Honor. I mean,
10 we're happy to go into this.

11 THE COURT: Mr. Birch, anything you want to
12 highlight on that and see -- I don't want to -- I know you
13 were here for the whole argument. I didn't know if Mr. Birch
14 had anything he wanted to add as far as the --

15 MR. BIRCH: We filed the -- with The Court a couple
16 days ago by saying that we had some rumors of settlements
17 going back and forth. And in light of that I'm saying we
18 didn't want to continue and put more cost on the parties until
19 we've received further instructions from The Court of where we
20 may help.

21 So I -- the reason I asked for that is come to this
22 hearing and asking Your Honor for some further instructions
23 you would like to give us to participate in this or shall we
24 put it in a (indiscernible) until further notice.

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, Distribution Trustee
of the Eric L. Nelson Nevada Trust dated
May30, 2001,

Appellant/Cross Respondent.

vs.

LYNITA SUE NELSON, Individually and in
her capacity as Investment Trustee of the
LSN NEVADA TRUST dated May 30,
2001; and ERIC L. NELSON, Individually
and in his capacity as Investment Trustee of
the ELN NEVADA TRUST dated May 30,
2001;

Respondents/Cross-Appellants.

MATT KLABACKA, as Distribution
Trustee of the Eric L. Nelson Nevada Trust
dated May30, 2001,

Appellants,

vs.

ERIC L. NELSON; LYNITA SUE
NELSON, INDIVIDUALLY; AND LSN
NEVADA TRUST DATED MAY 30, 2001,

Respondents.

Supreme Court Case No. 66772

District Court Case No. D-09-

411537

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10	03/06/2012	Motion for Payment of Attorneys' Fees and Costs	2461 – 2494
19	06/05/2013	Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4743 – 4752
8	11/07/2011	Motion to Dismiss	1885 - 1908
9	01/17/2012	Motion to Dismiss Amended Third-Party Complaint and Motion to Strike	2190 - 2224
8	11/29/2011	Motion to Dissolve Injunction	1916 - 1999
7	06/24/2011	Motion to Join Necessary Party; or in the Alternative; to Dismiss Claims Against The Eric L. Nelson Nevada Trust dated May 30, 2011	1606 - 1661
23	10/20/2014	Notice of Appeal	5576 – 5578
25, 26	06/23/2015	Notice of Appeal	6249 – 6251
21	09/10/2013	Notice of Entry of Injunctions from September 4, 2013 Hearing	5230 – 5241
10	01/31/2012	Notice of Entry of Order	2264 – 2272
11	05/29/2012	Notice of Entry of Order	2739 – 2745
12	06/05/2012	Notice of Entry of Order	2759 – 2770

12	07/11/2012	Notice of Entry of Order	2914 – 2920
12	07/11/2012	Notice of Entry of Order	2921 – 2929
19	08/07/2012	Notice of Entry of Order	4517 – 4520
	06/03/2012	Notice of Entry of Order	4691 – 4742
8	11/14/2011	Notice of Entry of Order and Order – August 24, 2011 Hearing	1909 - 1915
21	09/03/2013	Notice of Entry of Order Denying Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	5148 – 5153
23	09/22/2014	Notice of Entry of Order Determining Disposition of Dynasty Development Management, Inc. AKA Wyoming Downs	5553 – 5561
19	10/10/2012	Notice of Entry of Order from July 16, 2012 Hearing	4683 – 4690
19	08/31/2012	Notice of Entry of Order from April 10, 2012 Hearing and Injunction	4531 – 4539
19, 20	08/31/2012	Notice of Entry of Order from February 23, 2012 Hearing Partially Granting ELN Trust's Motion to Dismiss Third-Party Complaint Without Prejudice.	4540 – 4550
23	09/22/2014	Notice of Entry of Order from July 22, 2013 Hearing on Lynita Nelson's Motion to Amend or Alter Judgment for Declaration and Related Relief	5562 – 5575
21, 22	09/30/2013	Notice of Entry of Order from September 4, 2013 Hearing Regarding Payment of Lindell Professional Plaza Income	5247 – 5254
19	08/29/2012	Notice of Entry Of Order Granting Motion for Relief from Automatic Stay and Denying Motion to Dismiss Without Prejudice	4521 – 4527
12	06/05/2011	Notice of Entry of Order regarding Findings of Fact and Order dated June 5, 2012	2771 – 2782
7	08/09/2011	Notice of Entry of Stipulation and Order	1742 - 1746
8	09/14/2011	Notice of Filing a Summary Appraisal Report of a Two-Story Office Building (3611 Lindell Road, Las Vegas, NV)	1789 - 1801
10	02/27/2012	Notice of Filing Amendment to Source and Application of Duns for Lynita Nelson	2249 – 2460
10	01/27/2012	Notice of Filing Amendment to Source and Application of Funds for Emerald Bay Mississippi, LLC Filed December 8, 2011	2257 – 2263
10	02/27/2012	Notice of Filing Amendment to Source and Application of Funds for Eric L. Nelson Nevada Trust	2425 – 2248
7	07/05/2011	Notice of Filing Asset Schedule and Notes to Asset Schedule	1662 - 1683
9	12/23/2011	Notice of Filing Corrected Asset Schedule by Ownership	2186 - 2189
7	07/15/2011	Notice of Filing Income and Expense Reports for Banone-AZ LLC	1713 -1724

8	08/15/2011	Notice of Filing Income and Expense Reports for Emerald Bay Resorts, LLC	1762 – 1769
7	07/19/2011	Notice of Filing Income and Expense Reports for Eric L. Nelson Nevada Trust	1725 - 1741
7, 8	08/15/2011	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	1747 - 1761
9, 10	01/26/2012	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	2225 -2256
8	09/28/2011	Notice of Filing Income and Expense Reports for Lynita Nelson	1806 - 1817
7	07/11/2011	Notice of Filing Income and Expense Reports for: (1) Banone, LLC and (2) Dynasty Development Group	1684 - 1712
10	02/16/2012	Notice of Filing Source and Application of Funds for Banone-AZ, LLC	2362 – 2389
11	04/11/2012	Notice of Filing Source and Application of Funds for Dynasty Development Group, LLC	2645 – 2677
9	12/08/2011	Notice of Filing Source and Application of Funds for Eric L. Nelson Nevada Trust	2060 - 2095
11	04/23/2012	Notice of Filing Source and Application of Funds Pursuant to April 10, 2012 Hearing	2678 – 2709
8	10/03/2011	Notice of Filing Summary Appraisal Report of +202.50 Acres of Agricultural/Residential Land (Uinta County, Wyoming)	1854 - 1859
8	10/06/2011	Notice of Submission of First Billing for Fees and Expenses of Forensic Accountants	1860 -1884
11	04/09/2012	Opposition to Countermotion for Receiver, Additional Injunction and Fees and Costs	2630 – 2642
21	08/23/2013	Opposition to Imposition of Charging Order and Appointment of Receiver	5043 – 5066
10, 11	03/26/2012	Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2495 – 2594
20	06/18/2013	Opposition to Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert; and Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	4799 – 4812
16	07/20/2012	Opposition to Motion in Limine to Exclude to Exclude from Trial the Testimony and Report of Daniel T. Gerety, CPA, Layne T. Rushforth, Esq. and Any Purported Experts Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trusts' Pre-Trial Memorandum; and Counter-Motion to Continue Trial and for Attorneys' Fees and Costs	3803 – 3838

8, 9	12/01/2011	Opposition to Motion to Dismiss and Countermotion for an Award of Attorneys' Fees and Costs	2000 - 2040
9	12/07/2011	Opposition to Motion to Dissolve Injunction and Countermotion for an Aware of Attorneys' Fees and Costs	2041 - 2059
30	07/11/2012	Order entered in Case D-09-411537-D	7471 - 7479
20	06/19/2013	Order for Payment of Funds Pursuant to June 3, 2013 Decree of Divorce	4847 - 4850
30	08/09/2011	Order in Case No. D-09-411537-D	7400 - 7402
6	11/17/2010	Partial Transcript, Non-Jury Trial, November 17, 2010	1256 - 1435
6	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1436 - 1499
6, 7	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1500 - 1605
21	09/27/2013	Plaintiff Eric Nelson's Response to Lynita's Response to Court Ordered Accountings Provided by Eric Nelson	5242 - 5246
19	08/31/2012	Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001	4551 - 4610
30	01/28/2005	Promissory Note in favor of Lana Martin	7488
30	01/28/2005	Promissory Note in favor of Robert A. Martin	7489
29	09/25/1999	Real Estate Records for 5220 E. Russell Road, Las Vegas, Nevada (UUUU)	7017 - 7049
	06/06/2013	Receipt of Copy regarding Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4753 - 4754
8	09/19/2011	Reply to Counterclaim and Answer to Cross - Claim	1802 - 1805
24, 25	01/14/2015	Reply to ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Eric Nelson's Opposition to Defendants Motion to Enforce June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Opposition to Eric Nelson's Countermotion	5941 - 6076
11	05/22/2012	Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by Eric Nelson	2713 - 2738
22	10/14/2013	Reply to Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs	5255 - 5265

20	07/11/2013	Reply to Opposition to Defendant's Motion to Amend or Alter Judgement, for Declaratory and Related Relief and Joinder to Opposition	4851 – 4869
21	08/30/2013	Reply to Opposition to Imposition of Charging Order and Appointment of Receiver and Requests for Injunction and Fees and Costs	5067 – 5087
11	04/04/2012	Reply to Opposition to Motion for Payment of Attorneys' Fees and Costs	2595 – 2623
9	12/09/2011	Reply to Opposition to Motion to Dismiss and Countermotion for An Aware of Attorneys' Fees and Costs	2096 - 2123
9	12/09/2011	Reply to Opposition to Motion to Dissolve Injunction and Opposition to Countermotion for an Aware of Attorneys Fees and Costs	2124 -2139
22	10/15/2013	Reply to Plaintiff Eric Nelson's Response to Court Order Accountings	5266 - 5287
27, 28, 29	07/05/2012	Report of Gerety & Associates (Admitted as Intervenor Trial Exhibit 168)	6550 – 7014
21	08/30/2013	Response to Court Order Accountings Provided by Eric Nelson	5088 – 5147
19	09/28/2012	Response to Defendant Lynita S. Nelson's Post-Trial Memorandum on Trust Issues	4628 – 4657
29	01/21/2002	Soris Original Mortgage – (Wyoming Property) – (Admitted as Nelson Exhibit 41C)	7050 – 7068
8	08/24/2011	Summons directed to Eric Nelson	1779 -1782
8	08/24/2011	Summons directed to Lynita Sue Nelson	1783 -1786
11	04/05/2012	Supplement to Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2624 – 2629
	10/08/2012	Supplement to Verified Memorandum of Attorneys' Fees and Costs	4658 – 4682
26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
12	07/06/2012	The Eric L. Nelson Nevada Trust's Pretrial Memorandum	2783 – 2849
26	07/13/1993	The Eric L. Nelson Separate Property Trust (Admitted as Intervenor Trial Exhibit 7)	6313 – 6341
26	05/30/2001	The LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 25)	6395 - 6433
26	07/13/1993	The Nelson Trust (Admitted as Intervenor Trial Exhibit 5)	6283 - 6311
20, 21	08/01/2013	Transcript Re: All Pending Motions	4991 – 5039
21	09/05/2013	Transcript Re: All Pending Motions	5154 – 5229
22	10/21/2013	Transcript Re: All Pending Motions	5288 – 5347
25	01/26/2015	Transcript RE: All Pending Motions	6077 – 6225
22, 23	06/04/2014	Transcript RE: Decisions	5495 – 5552

20	06/19/2013	Transcript Re: Motion	4813 – 4846
20	07/22/2013	Transcript Re: Motion	4876 – 4990
10	02/23/2012	Transcript regarding Decision	2390 – 2424
10	01/31/2012	Transcript relating to Motion	2273 – 2361
4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
4, 5, 6	10/20/2010	Transcript, Non-Jury Trial, October 20, 2010	991 – 1255
1, 2	08/30/2010	Transcript, Non-Jury Trial, Volume 1 from August 30, 2010	40 – 258
2	08/31/2010	Transcript, Non-Jury Trial, Volume 2 from August 31, 2010	259 - 441
2, 3	08/31/2010	Transcript, Non-Jury Trial, Volume 3 from August 31, 2010	442 – 659
3,4	09/01/2010	Transcript, Non-Jury Trial, Volume 4 from September 1, 2010	660 –848
13, 14	07/17/2012	Trial Transcript Re: Non-Jury Trial	3181 – 3406
14, 15	07/18/2012	Trial Transcript Re: Non-Jury Trial	3407 – 3584
22	05/30/2014	Trial Transcript RE: Non-Jury Trial	5348 – 5494
15	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3585 – 3714
16	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3839 – 3943
17	07/24/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4050 – 4187
18	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4279 – 4447
15, 16	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3715 – 3802
16, 17	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3494 -4049
17, 18	07/24/2013	Trial Transcript Re: Non-Jury Trial – Vol. II	4188 – 4278
18, 19	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	4448 -4514
12, 13	07/16/2012	Trial Transcript Volume I	2930 – 3120
13	07/16/2012	Trial Transcript Volume II	3121 – 3180
26	02/17/2009	Trust Agreement of the Total Amendment and Restatement of the Nelson Trust (Admitted as Intervenor Trial Exhibit 14)	6351 – 6381
30	03/31/2011	Trust Ownership-Distribution Report of Larry Bertsch (Admitted as Exhibit GGGGG at Tab 9)	7397 – 7399
19	09/28/2012	Verified Memorandum of Attorneys' Fees and Costs	4611 – 4627

- a) Amy Arbeli – On January 29, 2009, ENA paid Amy Arbeli (“Arbeli”) \$4,287.88 for “Torngate Commission”. According to the records produced, Arbeli received¹¹ a 1099 in 2009 for \$4,287.88. We have not received employment records or commission agreements between Arbeli and ENA.
- b) Ashley Konold – In 2010, Ashley Konold (“Konold”) received payments totaling \$2,102.83. The following is a description of said payments:

Date	Amount	Name	Description
01/04/10	455.00	Ashley Konold	12/7/09-12/30/09
01/13/10	64.83	Ashley Konold	officemax-envelopes & mail labels
01/14/10	611.00	Ashley Konold	1/4/10 - 1/15/10
01/25/10	200.00	Ashley Konold	Petty Cash
01/28/10	572.00	Ashley Konold	we 1/29/10
02/01/10	200.00	Ashley Konold	Petty Cash
	<u>2,102.83</u>		

According to the records produced, Konold received¹² a 1099 in 2010 for \$1,638.00. We have not received employment records or agreements between Konold and ENA.

- c) Audie Verbrugge – On April 21, 2010, ENA paid Audie Verbrugge (“Verbrugge”) \$1,250.00 with a description of “Commission”. According to the records produced, Verbrugge received¹³ a 1099 in 2010 for \$1,250.00. We have not received employment records or commission agreements between Verbrugge and ENA.

¹¹ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

¹² As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

¹³ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- d) Bobby DeBorde – On April 21, 2010, ENA paid Bobby DeBorde (“DeBorde”) \$1,830.00 with a description of “Commission”. According to the records produced, DeBorde received¹⁴ a 1099 in 2010 for \$1,830.00. As of the date of this report, we have not received employment records or commission agreements between DeBorde and ENA.
- e) David Anderson – On April 20, 2009, ENA paid David Anderson \$3,500.00 relating to a “claim settlement”. According to the records produced, David Anderson did not receive a 1099 in 2009. As of the date of this report, we have not received a settlement agreement relating to the purpose of said payment.
- f) James Lindell – In 2009, ENA paid James Lindell \$8,840.71. The following is a description of said payments:

Date	Amount	Name	Description
08/24/09	2,000.00	James Lindell	Misc Work
08/24/09	1,340.71	James Lindell	Computer Reimbursement
09/23/09	2,500.00	James Lindell	commission
10/23/09	3,000.00	James Lindell	commission
	<u>8,840.71</u>		

According to the records produced, James Lindell received¹⁵ a 1099 in 2009 for \$7,500.00. As of the date of this report, we have not received employment records or commission agreements between James Lindell and ENA.

- g) Joseph Chad Lawson – On October 27, 2009, ENA paid Joseph Chad Lawson \$141.14 for “open house supplies”.

¹⁴ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

¹⁵ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- h) Keith Little – Between January 1, 2009 and May 31, 2011, ENA paid Keith Little (“Little”) \$46,535.91. The following is a chart of each payment:

Date	Amount	Name	Description
01/15/09	3,000.00	Keith Little	Commission Draw
03/16/09	3,000.00	Keith Little	Commission
03/26/09	30.67	Keith Little	Office Depot-Dividers/writing pads
04/15/09	3,000.00	Keith Little	Commission
05/13/09	3,000.00	Keith Little	Commission
05/13/09	45.23	Keith Little	Printer Cartridge
06/15/09	3,000.00	Keith Little	Commission
07/13/09	3,000.00	Keith Little	Commission
07/27/09	123.52	Keith Little	Home Depot-Office cleaning supplies-108
08/17/09	3,000.00	Keith Little	monthly commission
08/24/09	222.64	Keith Little	Keys, Laptop Converter, Ink Cartridges
09/09/09	290.57	Keith Little	Office Supplies-Office Depot / Keys
09/14/09	3,000.00	Keith Little	Commission
10/15/09	3,000.00	Keith Little	monthly commission
10/15/09	67.38	Keith Little	Gas Reimbursement
10/23/09	64.83	Keith Little	Gas
11/03/09	78.07	Keith Little	Gas & Printer cartridges
11/16/09	3,000.00	Keith Little	Commission
12/07/09	2,500.00	Keith Little	Commission
12/14/09	3,000.00	Keith Little	Commission
01/14/10	3,000.00	Keith Little	Commission
04/21/10	1,588.00	Keith Little	Commission
04/21/10	525.00	Keith Little	Commission
05/10/10	5,000.00	Keith Little	Commission
	<u>46,535.91</u>		

According to the records produced, Keith Little received¹⁶ a 1099 in 2009 and 2010 for \$38,500.00 and \$10,113.00, respectively. As of the date of this report, we have not received employment records or commission agreements between Keith Little and ENA.

¹⁶ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- i) Lana Martin – On February 24, 2010, ENA paid Lana Martin \$3,000.00, \$2,000 for “per contract” and \$1,000.00 for “February fee”. According to the records produced, Lana Martin received¹⁷ a 1099 in 2010 for \$3,000.00. As of the date of this report, we have not received a contract or agreement between Lana Martin and ENA.
- j) Lisa Klein - Between January 1, 2009 and May 31, 2011, ENA paid Lisa Klein (“Klein”) \$33,690.58. The following is a chart of each payment:

Date	Amount	Name	Description
01/15/09	3,000.00	Lisa Klein	Commission Draw
03/16/09	3,000.00	Lisa Klein	Commission
04/15/09	3,000.00	Lisa Klein	Commission
05/11/09	190.58	Lisa Klein	Phk Maps / CDs-Kinkos / Printer Ink
05/13/09	3,000.00	Lisa Klein	Commission
06/15/09	3,000.00	Lisa Klein	Commission
07/13/09	3,000.00	Lisa Klein	Commission
08/17/09	3,000.00	Lisa Klein	monthly commission
09/14/09	3,000.00	Lisa Klein	Commission
10/15/09	3,000.00	Lisa Klein	monthly commission
11/16/09	3,000.00	Lisa Klein	Commission
12/14/09	3,000.00	Lisa Klein	Commission
03/15/10	500.00	Lisa Klein	Commission
	<u>33,690.58</u>		

According to the records produced, Klein received¹⁸ a 1099 in 2009 for \$37,500.00. As of the date of this report, we have not received employment records or commission agreements between Klein and ENA.

¹⁷ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

¹⁸ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- k) Stewart Larsen – On January 29, 2010, ENA paid Stewart Larsen \$15,000.00 for “Sugar Daddy's commission”. According to the records produced, Stewart Larsen received¹⁹ a 1099 in 2010 for \$15,000.00. As of the date of this report, we have not received employment records or commission agreements between Stewart Larsen and ENA.
- l) Terel Coomes – On January 29, 2009, ENA paid Terel Coomes (“Coomes”) \$1,121.00 for “Torngate Commission”. According to the records produced, Coomes received²⁰ a 1099 in 2009 for \$1,121.00. As of the date of this report, we have not received employment records or commission agreements between Coomes and ENA.
- m) Tracey Cavanaugh - On January 29, 2010, ENA paid Tracy Cavanaugh (“Cavanaugh”) \$15,000.00 for “Sugar Daddy's commission”. According to the records produced, Cavanaugh received²¹ a 1099 in 2010 for \$10,000.00. As of the date of this report, we have not received employment records or commission agreements between Cavanaugh and ENA.

P. Other Companies - The following is a list of companies who received payments from ENA:

Name	Amount	
Taylor Prince LLC	2,804.93	(a)
Joseph Herrera, LLC	2,804.93	(b)
LV Default (Anthony Martin)	5,000.00	(c)
	<u>10,609.86</u>	

¹⁹ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

²⁰ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

²¹ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

- a) Taylor Prince LLC – On January 29, 2009, ENA paid Taylor Prince LLC \$2,804.93 for “Torngate Ave. Commission”. According to the records provided, Taylor Prince, LLC received²² a 1099 in 2009 for \$2,804.93. As of the date of this report, we have not received employment records or commission agreements between Taylor Prince, LLC and ENA.
- b) Joseph Herrera, LLC – On January 29, 2009, ENA paid Joseph Herrera, LLC \$2,804.93 for “Torngate Commission”. According to the records provided, Joseph Herrera, LLC received²³ a 1099 in 2009 for \$2,804.93. As of the date of this report, we have not received employment records or commission agreements between Joseph Herrera, LLC and ENA.
- c) LV Default (Anthony Martin) – On July 20, 2009, ENA paid LV Default \$5,000.00 for “website information”. According to the records provided, Joseph Herrera, LLC received²⁴ a 1099 in 2009 for \$5,000.00.

Q. Ending Cash Balance – As of May 31, 2011, according to the Peachtree files, ENA had an ending bank balance of \$6,926.61 in the Bank of America account ending in #5466.

Larry L. Bertsch, CPA & Associates reserves the right to update this report upon the production of documents and/or evidence relating to the transactions continued in this report.

²² As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

²³ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

²⁴ As the 1099 is only a copy, we cannot determine if the 1099s were filed with the IRS.

1 **NOTC**

2 Larry L. Bertsch, CPA, CFF
3 Nicholas S. Miller, CFE
4 LARRY L. BERTSCH, CPA & ASSOCIATES
5 265 East Warm Springs Rd., Suite 104
6 Las Vegas, Nevada 89119
7 Telephone: (702) 471-7223
8 Facsimile: (702) 471-7225

9 *Forensic Accountants*

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 ERIC L. NELSON,

14 Plaintiff,

15 v.

16 LYNITA SUE NELSON,

17 Defendant.

Case No. D-09-411537-D
Dept. O

**NOTICE OF FILING
AMENDMENT TO SOURCE AND
APPLICATION OF FUNDS FOR
EMERALD BAY MISSISSIPPI, LLC
FILED DECEMBER 8, 2011**

18 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY
19 L. BERTSCH, CPA & ASSOCIATES, file the Amendment to Source and Application of Funds for
20 Emerald Bay Mississippi, LLC filed December 8, 2011, a copy of which is attached as **Exhibit "A."**

21 DATED this 27th day of January, 2012.

22 **LARRY L. BERTSCH CPA & ASSOCIATES**

23 

24 Larry L. Bertsch, CPA, CFF
25 Nicholas S. Miller, CFE
26 265 East Warm Springs Rd., Suite 104
27 Las Vegas, Nevada 89119

28 *Forensic Accountants*

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 27th day of January, 2012, I mailed a copy of the foregoing **NOTICE OF**
3 **FILING AMENDMENT TO SOURCE AND APPLICATION OF FUNDS FOR EMERALD**
4 **BAY MISSISSIPPI, LLC FILED DECEMBER 8, 2011** to the following at their last known
5 address, by depositing the same in the United States mail in Las Vegas, Nevada, first class postage
6 prepaid and addressed as follows:

7 Rhonda K. Forsberg, Esq.
8 IVEY FORSBERG & DOUGLAS
9 1070 West Horizon Ridge Parkway, #100
Henderson, NV 89012
Attorneys for Plaintiff Eric L. Nelson

Robert P. Dickerson, Esq.
THE DICKERSON LAW GROUP
1745 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant Lynita Sue Nelson

10 Mark A. Solomon, Esq.
11 Jeffery P. Luszeck, Esq.
12 SOLOMON DWIGGINS FREER &
13 MORSE, LTD.
9060 W. Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Eric L. Nelson Nevada
Trust

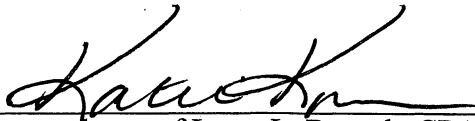
14
15
16 
17 An employee of Larry L. Bertsch, CPA & Associates
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19
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28

EXHIBIT A

Amendment to
Source and Application of Funds
For
Emerald Bay Mississippi, LLC

From January 1, 2009 through May 31, 2011

District Court Family Division

Clark County, Nevada

Case Number: D-09-411537-D

Department O

Original Report filed on December 8, 2011

Amended Report Date: January 27, 2012

Prepared by:

Larry L. Bertsch, CPA, CFF

&

Nicholas Miller, CFE, CSAR, MBA

On December 8, 2011, Larry L. Bertsch and Nicholas Miller, filed a *Notice Of Filing Source And Application Of Funds For Emerald Bay Mississippi, LLC* in District Court, Clark County, Nevada Case No. D-09-411537-D Dept. O. Pursuant to the filing, we received subsequent information relating to adjustments needing to be made to the initial filing. We submit the following report to serve as an amendment to the December 8, 2011 filing:

Page 5: (F) Cal Nelson

Original Filing: "Eric indicates that this skip loader is currently at the Silver Slipper in Mississippi".

Amended: In an email dated December 20, 2011, Rochelle McGowan indicates "The skiploader is at the RV Park in Mississippi"

Page 8: (A) Cliff McCarlie

Original Filing: "Although an employment contract has not been provided"

Amended: In an email dated December 20, 2011, Rochelle McGowan indicates the following:

"You state an employment contract has not been provided - For clarification, Eric has been advised not to have employment contracts because they are not required.....That is why we 1099 anyone who works for any of the companies that is not a w4 employee. This is how the businesses have always run."

A copy of the December 20, 2011 email from Rochelle McGowan to Nick Miller is attached as **EXHIBIT A** to this amendment.

EXHIBIT A

From: Rochelle McGowan
To: Nick Miller
Subject: Nelson: Emerald Bay MS report changes
Date: 12/20/2011 9:37:12 AM

Nick,

Please find our corrections below to the *Emerald Bay MS, LLC – Notice of Filing of Source & Application of Funds* report:

Page 5: #F: The skiploader is at the RV Park in Mississippi.

Page 8: #A: You state an employment contract has not been provided - For clarification, Eric has been advised not to have employment contracts because they are not required.....That is why we 1099 anyone who works for any of the companies that is not a w4 employee. This is how the businesses have always run.

Also, the payments to the individuals are all RV Park/land related expenses as well ...I'm not sure why they are separated out (*other than to show what the payments were for*) and not considered on your report as business expenses because they ALL are related and necessary to the upkeep. I'm still looking at the ELN Trust report that was filed as I saw numerous things that need to be corrected as they are incorrect. I will get those changes to you when I've gone thru it all.

Thanks.

Rochelle McGowan
Nelson Corporate Offices
3611 S. Lindell Road, Ste. 201
Las Vegas, NV 89103
702.362.3030 ext. 4
702.227.0075 fax

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FILED

JAN 31 12 09 PM '12

DISTRICT COURT

Ann L. Sullivan
CLERK OF THE COURT

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff,

vs.

LYNITA NELSON,

Defendant,

CASE NO.: D-09-411537-D

DEPT. NO.: O

NOTICE OF ENTRY OF ORDER

TO:

Rhonda Forsberg, Esq.
Robert Dickerson, Esq.
Mark Solomon, Esq.
Jeffrey Luszeck, Esq.

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered
in the above-referenced case on the 31st day of January, 2012.

DATED this 31st day of January, 2012.

Lori Parr

Lori Parr
Judicial Executive Assistant
Dept. O

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2 ORDR
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FILED

JAN 31 12 08 PM '12

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

Ann L. Sullivan
CLERK OF THE COURT

8 ERIC L. NELSON,)
9)

10 Plaintiff,)

CASE NO.: D-09-411537-D

DEPT. NO.: O

11 vs.)

12 LYNITA NELSON,)

13 Defendant,)
14)
15)

FINDINGS OF FACT
AND ORDER

16 This Matter having come before this Honorable Court on December 13, 2011, on
17 Counterdefendant/Crossdefendant/Third-Party Defendant Lana Martin, Distribution Trustee of
18 the Eric L. Nelson Nevada Trust's Motion to Dissolve Injunction, Defendant Lynita Nelson's
19 Opposition to Motion to Dissolve Injunction and Countermotion for an Award of Attorney's
20 Fees and Costs and Lana Martin's Reply to Opposition to Motion to Dissolve Injunction and
21 Opposition to Countermotion for an Award of Attorney's Fees and Costs, with Plaintiff, Eric
22 Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson,
23 appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq. and Josef
24 Karacsonyi, Esq., and Defendant Lana Martin, appearing and being represented by Mark A.
25 Solomon, Esq. and Jeffrey P. Luszeck, Esq., with the Court having reviewed
26 Counterdefendant/Crossdefendant/Third-Party Defendant's Motion, Defendant's Opposition
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1
2 and Countermotion and Counterdefendant/Crossdefendant/Third-Party Defendant's Reply and
3 Opposition to Countermotion, having heard oral argument and being duly advised in the
4 premises, good cause being shown:

5 THE COURT HEREBY FINDS that on May 18, 2009, pursuant to Eighth Judicial
6 District Court Rule 5.85, this Court issued a Joint Preliminary Injunction (hereinafter "JPI")
7 against Mr. Nelson and Ms. Nelson respectively.
8

9 THE COURT FURTHER FINDS that at the hearing held on April 4, 2011, Ms. Nelson
10 made a request that the Court order that any proceeds Mr. Nelson received from his interest in
11 Dynasty Development Group, LLC (hereinafter "Dynasty") or the Silver Slipper Casino
12 (hereinafter "Silver Slipper") be placed in an interest-bearing trust account to be held by his
13 attorney, David Stephens, Esq.

14 THE COURT FURTHER FINDS that at the April 4, 2011 hearing, neither Mr. Nelson,
15 nor his counsel, objected to the Court placing the "Dynasty Development" and/or "Silver
16 Slipper" proceeds in an interest-bearing trust account.
17

18 THE COURT FURTHER FINDS that on June 9, 2011, the Court entered its Order from
19 the April 4, 2011 and such Order contained the following language:

20 IT IS FURTHER ORDERED that any monies received by Plaintiff, ERIC L. NELSON
21 or any entity owned or controlled by Mr. Nelson, related to his ownership interest in the
22 Silver Slipper Casino/Dynasty Development Group, LLC, shall immediately be turned
23 over to his counsel, David Stephens, Esq., to be placed into and held by Mr. Stephens'
(sic) in an interest bearing attorney trust account.

24 THE COURT FURTHER FINDS that on August 9, 2011, Mr. and Ms. Nelson
25 stipulated to joining the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust") and the LSN
26 Nevada Trust (hereinafter "LSN Trust") as necessary parties to this divorce action.
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2 THE COURT FURTHER FINDS that the ELN Trust desires to obtain One Million Five
3 Hundred Sixty-Eight Thousand Dollars (\$1,568,000) from a transaction involving the Silver
4 Slipper to purchase the Wyoming Downs racetrack.

5 THE COURT FURTHER FINDS that from the financial records submitted thus far by
6 Mr. Larry Bertsch, the Court-appointed forensic accountant, the ELN Trust has a One Hundred
7 Percent (100%) ownership interest in Dynasty, and Dynasty currently has a Thirty-Four Percent
8 (34%) interest in the Silver Slipper Casino.
9

10 THE COURT FURTHER FINDS that Lana Martin, as Distribution Trustee of the Eric
11 L. Nelson Nevada Trust, argues in her Motion that the June 9, 2011 injunction should be
12 dissolved on the following grounds: that the injunction directly affects the interest of Dynasty,
13 an asset wholly owned by the ELN Trust; that the ELN Trust, or more specifically, Lana
14 Martin, was not a party to the action, and as a result thereof, Ms. Nelson failed to provide
15 adequate notice to the ELN Trust; that Ms. Nelson failed to show the requisite elements for
16 injunctive relief; and that the injunction is void on its face because the Court failed to address
17 the duration of the injunction and failed to state its reasons for its issuance.
18

19 THE COURT FURTHER FINDS that Ms. Nelson argues in her Opposition that she
20 does not have to meet the requisite elements for injunctive relief as the Court has complete
21 discretion to order injunctive relief in a divorce action, and that the Court is required to make
22 any and all orders necessary to preserve any property pending the Court's ultimate
23 determination as to the property's classification as community or separate.
24

25 THE COURT FURTHER FINDS that NRS 33.010 (2) provides that an injunction may
26 be granted when it is evident that the actions of one party will cause irreparable harm to the
27 other party.
28

1
2 THE COURT FURTHER FINDS that NRCP 65 (d) provides that all orders that grant
3 an injunction must specifically address the acts that must be stopped and is binding only upon
4 the parties to the action.

5 THE COURT FURTHER FINDS that in order for a moving party to obtain preliminary
6 injunctive relief, the moving party must establish that there is a likelihood of success on the
7 merits and that if the non-moving party continued its current course of conduct, the moving
8 party would suffer irreparable harm of which there would be no remedy at law that could
9 adequately redress such harm. *Dept. of Conservation and Natural Resources, Div. of Water*
10 *Resources v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (Nev. 2005).

12 THE COURT FURTHER FINDS that a Court has complete discretion to issue a
13 preliminary injunction, but in the event it issues the injunction, the Court must address the
14 irreparable harm in specific terms to warrant its use of this extraordinary remedy. *Danberg*
15 *Holdings Nevada, LLC v. Douglas County and its Bd. of County Com'rs*, 115 Nev. 129, 143-
16 44, 978 P.2d 311, 319-20 (Nev. 1999).

18 THE COURT FURTHER FINDS that at the time it ordered the preliminary injunction
19 with respect to any monies received by Mr. Nelson related to his ownership interest in Dynasty
20 and the Silver Slipper, the ELN Trust and/or its Distribution Trustee, Lana Martin, were not
21 parties to the action as they did not join until August 9, 2011.

22 THE COURT FURTHER FINDS that while the ELN Trust and/or Lana Martin were
23 not parties to the action at the time that the requested injunctive relief was granted, it is readily
24 apparent that the ELN Trust and Lana Martin were aware of the divorce proceedings and the
25 request for injunctive relief based upon the following: Eric Nelson is a beneficiary of the ELN
26 Trust; Eric Nelson is the Investment Trustee of the ELN Trust; and that six (6) days of
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2 extensive testimony as to the ELN Trust was heard by this Court, commencing on August 31,
3 2010 and concluding on November 22, 2010.

4 THE COURT FURTHER FINDS that while the preliminary injunction issued by this
5 Court impacted the ELN Trust and its ownership interest in Dynasty and the Silver Slipper, the
6 Court did not issue the preliminary injunction pursuant to NRCP 65 (d) as the June 6, 2011
7 Order was simply an extension of the Joint Preliminary Injunction (hereinafter "JPI") that this
8 Court previously issued on May 18, 2009, and, as such, the provisions of NRCP 65 (d) were
9 inapplicable.
10

11 THE COURT FURTHER FINDS that NRCP 65 (f) states: "[t]his rule is not applicable
12 to suits for divorce . . . In such suits, the court may make prohibitive or mandatory orders, with
13 or without notice or bond, as may be just."

14 THE COURT FURTHER FINDS that Eighth Judicial District Court Rule (hereinafter,
15 EDCR) 5.20, Preliminary Injunctions and Temporary Restraining Orders, specifically provides
16 that the requirements enumerated in EDCR 2.10, which requires that the moving party must file
17 a Motion and that a hearing must be held on such Motion, do not apply to the Court's issuance
18 of a JPI.
19

20 THE COURT FURTHER FINDS that EDCR 5.85 provides that the Clerk may issue a
21 JPI that enjoins both parties to the action from taking any action that disposes of community
22 property or *any property which is the subject of a claim of community interest*, except in the
23 usual course of business or for the necessities of life, without the written consent of the parties
24 or the permission of the court.
25

26 THE COURT FURTHER FINDS that while the ELN Trust argues that EDCR 5.85 is
27 inapplicable in the instant matter because a JPI is designed to prevent only the divorcing parties
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2 from taking any of the prohibited actions, the ELN Trust and the assets contained therein are
3 subject to a community interest claim by Ms. Nelson which the Court has yet to rule upon.

4 THE COURT FURTHER FINDS that NRS 125.050 states that the Court is obligated to
5 make any orders that are necessary to preserve the status quo of the property and any other
6 pecuniary interests to ensure that each party receives his and her equitable share of the marital
7 estate.

8
9 THE COURT FURTHER FINDS that the aforementioned Rules (i.e., NRCP 65 (f),
10 EDCR 5.20, and EDCR 5.85), in conjunction with NRS 125.050, promote a policy of
11 empowering this Court to use injunctive relief to preserve the status quo of the marital estate
12 and to ensure that the value of the marital estate will not be decreased unilaterally as both
13 parties are entitled to an equitable share of the marital estate.

14 THE COURT FURTHER FINDS that in issuing the injunctive relief, even if the Court
15 was to apply the likelihood of success on the merits principle as enunciated in *Dept. of*
16 *Conservation and Natural Resources*, and the irreparable harm provision of NRS 33.010, Ms.
17 Nelson would still prevail.

18
19 THE COURT FURTHER FINDS that it has presided over six (6) days of trial in 2010,
20 wherein Jeffrey Burr, Esq., the attorney who drafted the ELN and LSN Trusts, respectively,
21 testified that Mr. Nelson and Ms. Nelson intended that the ELN Trust and the LSN Trust were
22 formed for purposes of asset protection and were not meant to alter the rights of the parties in
23 the event of a dissolution of marriage.

24
25 THE COURT FURTHER FINDS that while Mr. Nelson's opinion as to whether
26 property is community or separate is not controlling, Mr. Nelson testified that the property held
27 by the ELN Trust was community property, and, as such, supports Attorney Burr's testimony
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1
2 that the Trusts were formed for purposes of asset protection and not intended as a distribution
3 of the marital estate.

4 THE COURT FURTHER FINDS that based upon the testimony of Attorney Burr and
5 Mr. Nelson, it appears that Ms. Nelson does have a likelihood of success on the merits with
6 respect to her community interest claims concerning the ELN Trust and the assets held therein.

7 THE COURT FURTHER FINDS that although the ELN Trust asserts that there would
8 be an adequate remedy at law for Ms. Nelson if she were to prevail because money damages
9 could be readily ascertainable, Ms. Nelson would suffer irreparable harm based upon the
10 unique nature and character of the extensive real property contained in the ELN Trust; and the
11 distinct possibility that the assets contained in the ELN Trust could be sold or exchanged for
12 non-performing assets, thereby reducing the overall value of Ms. Nelson's community interest
13 claim and creating a strong likelihood that such value could not be recouped by Ms. Nelson.

14 THE COURT FURTHER FINDS that Lana Martin, as Trustee of the ELN Trust, must,
15 in accordance with its Articles and its fiduciary duties under NRS 163.380, be able to use any
16 funds or assets necessary to defend against any lawsuits, including this divorce action.¹

17 THE COURT FURTHER FINDS that Ms. Nelson is not entitled to attorney's fees as
18 the ELN Trust's Motion to Dissolve Injunction is not deemed to be frivolous.

19 THE COURT FURTHER FINDS that while the ELN Trust argues that it must be able
20 to conduct business in the ordinary course, specifically by allowing Mr. Nelson, as Investment
21 Trustee, to acquire and sell assets like the Wyoming Downs racetrack for the good of the ELN
22 Trust, such argument should not be entertained until the Court renders a determination as to
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28 ¹ NRS 163.380 provides that a person acting in his role as a fiduciary may utilize any income created by the Trust
to pay professionals necessary to assist in the administration of the Trust, including attorneys.

1
2 Ms. Nelson's community interest claim against the ELN Trust and the property contained
3 therein.

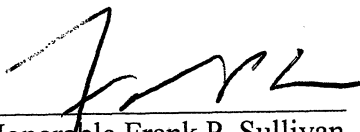
4 THEREFORE, IT IS HEREBY ORDERED that the ELN Trust's Motion to Dissolve
5 Injunction is denied in its entirety.

6 IT IS FURTHER ORDERED that any monies received by Eric L. Nelson, or any entity
7 owned or controlled by Mr. Nelson, related to his ownership interest in the Silver Slipper
8 Casino/Dynasty Development Group, LLC, shall remain in his attorney's interest bearing
9 account and that the ELN Trust is otherwise enjoined from using any such monies received
10 from the sale of Dynasty Development Group LLC's interest in the Silver Slipper Casino
11 Venture LLC without an Order from this Court.

12
13 IT IS FURTHER ORDERED that Lana Martin, Trustee of ELN Trust, is free to seek
14 leave of this Court to obtain any funds or assets necessary to defend against any lawsuits,
15 including this divorce action, that will have a direct effect on the value of any properties that
16 are contained in the ELN Trust and, as such, are susceptible to a community interest claim.

17
18 IT IS FURTHER ORDERED that Ms. Nelson's Countermotion for Attorney's Fees and
19 Costs is denied in its entirety.

20 Dated this 31st day of January, 2012.

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24 Honorable Frank P. Sullivan
25 District Court Judge – Dept. O
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FILED
JUN 24 2015
John J. Sullivan
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ERIC L. NELSON)	
)	
Plaintiff,)	CASE NO. D-09-411537-D
)	
vs.)	DEPT. O
)	
LYNITA NELSON)	
)	
)	SEALED
Defendant.)	
_____)	

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: MOTION

TUESDAY, JANUARY 31, 2012

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APPEARANCES:

The Plaintiff:	ERIC NELSON
For the Plaintiff:	MARK A. SOLOMON, ESQ.
	JEFFREY P. LUSZECK, ESQ.
	9060 W. Cheyenne Ave.
	Las Vegas, Nevada 89129
	(702) 853-5483
	RHONDA K. FORSBERG, ESQ.
	64 N. Pecos Rd. #800
	Henderson, NV 89074
	(702) 990-6468
The Defendant:	LYNITA NELSON
For the Defendant:	ROBERT P. DICKERSON, ESQ.
	KATHERINE L. PROVOST, ESQ.
	JOSEF M. KARACSONYI, ESQ.
	1745 Village Center Cir.
	Las Vegas, Nevada 89134
	(702) 388-8600
Also Present:	LARRY BIRCH
	NICHOLAS MILLER

1 LAS VEGAS, NEVADA

TUESDAY, JANUARY 31, 2012

2 P R O C E E D I N G S

3 (The following transcript contains multiple
4 indiscernibles due to poor recording quality.)

5 (THE PROCEEDINGS BEGAN AT 13:39:33)

6

7 THE COURT: Good afternoon, everybody. It's good to
8 see everybody. Everybody can be seated. I don't need
9 glasses. I just put them on because it makes me look
10 intellectual. I need all the help I can get. So -- ready?

11 This is the time set in the matter of Eric L. Nelson
12 and Lynita Nelson, Case Number D411537. We'll get everybody's
13 appearances for the record and we'll get this show on the
14 road. We'll start with Mr. Solomon.

15 MR. SOLOMON: Yes. Mark Solomon, Bar Number 481, on
16 behalf of the ELN Trust and the trustees.

17 THE COURT: Thank you.

18 MR. LUSZECK: Jeff Luszeck, Bar Number 9619, on
19 behalf of the ELN Trust and the trustees.

20 THE COURT: Thank you.

21 MS. FORSBERG: Good afternoon, Your Honor. Rhonda
22 Forsberg, 9557, on behalf of Eric Nelson.

23 THE COURT: Thank you.

24 MR. KARACSONYI: Josef Karacsonyi, 10634, on behalf

1 of the defendant and counter claimant and third party
2 plaintiff, Ms. Lynita Nelson.

3 THE COURT: Thank you.

4 MR. PROVOST: Katherine Provost, Bar Number 8414,
5 (indiscernible).

6 THE COURT: Thank you.

7 It's good to see Mr. Nelson and Ms. Nelson as well.
8 It seems like we've become old friends over the course of
9 these proceedings. Feel almost like we're family I guess. So
10 it's good to see everybody. I have read all the motions and
11 oppositions and ready to go forward at this time. I'm going
12 to -- give me some preparatory statements so I can kind of
13 focus your arguments to see what you think. My goal in this
14 case is to get you guys divorced. Enough's enough. I intend
15 to give you a two-week trial date and I'm ready to start
16 tomorrow if you're ready. I'll make a real thing. I'm going
17 to cut through all this. I'm ready to go when you guys are
18 ready. I'll make myself ready to go.

19 As far as the third party complaints, I'll tell you
20 right now I'm not inclined to get into all these fiduciary
21 breach of duties and getting against the whole family that's
22 involved on that side. All the fraud, deceit, the fraud and
23 inducement, all those issues, I'm really not inclined to get
24 into those. I'll hear argument on it, see if you can persuade

1 me otherwise. The reason for that is those are actions that
2 you can file which are civil remedy. I see those as a back up
3 to what happens here in this case as the property.

4 This is a divorce court. My incline is to get you
5 guys divorced and do an equitable distribution of property.
6 I'm not going to -- what's happening in this case I've got the
7 trust attorneys and respect every -- just saying, oh it's just
8 a trust, trust is all by itself separate, don't put it in the
9 divorce thing because it's separate property, separate entity.
10 I understand that, but I'm not ignoring a 28-year marriage.
11 And the way these things were set up and the fact that Mr.
12 Nelson made every decision for 28 years. He did everything
13 with all the trust.

14 I heard all the testimony. It was six days that I
15 reviewed in testimony. And Ms. Lynita, Attorney Bare (ph)
16 saying that basically when he talked to Ms. Lynita, she said
17 Eric has to sign it. I signed it. That's what he does, I
18 raise the kids and he takes care of all that. I'm not going
19 to ignore that with my equitable powers of divorce nor a 28-
20 year marriage and say, well it's just a trust and it legal.
21 But I do understand the legal position of the trust. I'm not
22 dumb. I saw those trusts were set up. I know the
23 (indiscernible) trust on that. And the issue -- I know who
24 ran the show on that. I know who was making the decisions on

1 those and what I heard so far.

2 Now that may change after six days of testimony, but
3 I heard it was six days of testimony. It's pretty clear who's
4 running the show, who made the business decisions. He was a
5 very good business man, made good money for this estate
6 through the 28 years of marriage. I'm not going to ignore
7 that part either. So I'm not looking at the trust separate
8 and apart, and I'm not looking at the divorce separate and
9 apart because you still have the issues of trust law, and you
10 have the equitable of This Court for divorce with a 28-year
11 marriage. So I recognize that.

12 Some folks who (indiscernible) issues on that, and
13 that's why I'm not really inclined as a third party complaint
14 to get into all those other fifteen issues. That could go on
15 for years litigating that in civil case on that. I'd be
16 inclined to dismiss the third party complaint without
17 prejudice. So as things go out there, people can litigate
18 that for the next nine years. I'm not inclined to get This
19 Court caught up in discovery for the next eight months because
20 these people need to be divorced.

21 I'm not inclined to bring in Ms. Nola (ph) and every
22 in this case on that, which I think were employees and with
23 Eric do -- what Eric told them to do. I don't see that they
24 necessarily were conspiring, not that I have looked at that

1 evidence. But I'm just not inclined to go that route, and I'm
2 not inclined to give a declaratory judgment saying that the
3 entity is a valid, self-funded trust -- expensive trust
4 account and therefore nobody has any claim against Eric or Ms.
5 Lynita. I'm not going to go there either. I'm not inclined
6 to. So there argument -- those issues.

7 I'm inclined to hear testimony to make the
8 determinations as to community property which is fair and
9 equitable, hear the argument about the trust, how that was
10 managed. A lot of these issues about piercing the alter ego
11 of the trust and those other breach of duties and fraud and
12 deceit will come out when the testimony of the parties as to
13 how these things were arranged and what the intent of the
14 parties were and what's the legal issues as to trust, and make
15 my findings and do an equitable and fair division of property
16 based on the length of marriage. And there's other ways to
17 get around it.

18 I'll be real honest with you. When I look at that,
19 if it looks like with the trust, then there's going to be
20 other issues on that as far as a large spousal support to
21 balance out the equity in these parties. There's other ways
22 to do it, and I will find ways to do fair and just by the
23 parties while maintaining the law. So I want to be honest
24 with you guys on that. That's kind of where I'm looking at

1 right now, but I'm not inclined for Ms. Lynita to get in all
2 those third party complaints, getting in all those issues.
3 That would take us forever to get in those issues.

4 And as far as the distribution of the trustees --
5 you know, the trustees got involved in this. I don't think
6 that they're necessarily caught up in this on their own.
7 They're employees of Mr. Nelson doing things at the direction
8 of Mr. Nelson I would assume with all that testimony. So I'd
9 be inclined to strike the third party complaint without
10 prejudice so they could pursue that in the civil court. It
11 might be moot depending what happens in this determination.
12 But you guys need to be divorced.

13 You need to get the testimony so I can make findings
14 as of the property, what is community, what is separate and do
15 what you need to do and appeal to the Supreme Court if you
16 guys need to do -- knock that out there because you can
17 litigate this forever. And then do your civil case if it
18 doesn't come out that way (indiscernible) your civil action
19 because I see that bouncing in the courts for years.

20 I do know Mr. Solomon has put some time in in this
21 case on that from the trust, so I'd be glad to hear about some
22 money be released from the trust so that you could get paid or
23 other services, fees on that. But the issue get these parties
24 divorced. Enough is enough. You guys need to be divorced and

1 I'm ready to give you two weeks and I'll start that tomorrow
2 if you're ready to go because you guys need to be done with
3 it.

4 While I like the pleasure of seeing both of you in
5 court, I can't say the same for all the attorneys. No. I
6 respect all the attorneys here. But it's been going on; you
7 guys need closure. You need to move on, and it's been open
8 since 2009. I think you've been separated since 2008 and I
9 think the divorce was filed in 2009, and you guys need some
10 closure one way or the other. And you need to do right and do
11 the fair thing. You raised children together on that, so it's
12 time to kind of sit through see the big picture, the harm it's
13 been doing to the family, continues to do to the family
14 because people just don't get closure.

15 But that's kind of was my preliminary when I read
16 everything because I did not want to turn this into a civil
17 litigation that would be protracted and new discovery. But
18 I'd be glad to hear arguments on that and from the trust as
19 well. I just want to kind of give you guys some initial
20 feelings. When I read everything and kind of tell you with
21 the history of this case, we need to get these people
22 divorced. We need to make a determination as to property.

23 Part of the issue on this case was the money. I
24 know Ms. Lynita was worried that it was money being hidden,

1 where are things at, no one felt they had a good handle around
2 the property because it kind of changed with the transactions
3 going, lots of transactions, maybe hundreds of transactions
4 going on. We got Mr. Birch involved with the forensic, and I
5 feel comfortable. I'm seeing where things are going, where
6 the money is which opens up some issues you had about waste,
7 was he getting money to his family wrongfully. And I read Mr.
8 Birch's most recent report about showing the money with family
9 members and what was paid in comparison to the 1099's, what it
10 was set as for. But he's able to confirm that, so I got a
11 pretty good idea of what everything's out there now which was
12 one of the concerns.

13 That was the block and settlement because you felt
14 you didn't know what was out there and you can't make a
15 determination if you think things might be hidden out there or
16 you don't know the true value of out there. So I think that's
17 been beneficial for This Court to get a handle on what's out
18 there, where it's going. I think Mr. Birch has done a good
19 job to help This Court.

20 So that's kind of where we're at. So that would be
21 my inclination at this time. I'm glad to hear argument to
22 persuade me otherwise, and I'm glad to further consider it. I
23 think you got my one decision. Did they pass out my earlier
24 from December 13th, the written findings? I got another one

1 on the attorney's fees for the contempt that was -- came on
2 that for that same date, and that's in final form. I'll have
3 that to you by the end of the week. I think that's another
4 eight or ten pages of, if I do say, just brilliance. No.
5 Just a lot of times I'll spending on those findings to try to
6 really show you that I am looking at the case.

7 I do apologize for letting this case get out of
8 control. I've been assigned as a juvenile judge last July
9 with no domestics, and I kept a couple domestics to try to get
10 it resolved on that so you wouldn't be stuck -- so you guys
11 wouldn't be in 2012 still trying to be divorced. So you can
12 say I didn't handle that too well. But my primary is
13 juvenile. So I wasn't on top of this case, but I intend to
14 get on top of it now, get you guys divorced, get
15 determinations as property and people can do what they need to
16 do with that and I respect their rights as to whatever they
17 need to do. But my goal is to do fair and just in Family
18 Court as we're entitled to do and following the law.

19 With that, Counsel, do you want to make any
20 arguments as the third party complaint and flush some issues
21 out. I'll be glad, like I said, to hear argument and then
22 take under advisement as I need to to give you specific
23 findings as needed.

24 MR. KARACSONYI: Okay. Your Honor, I'd like to just

1 start with basically how we got here to this point. As you
2 recall, you had several days of testimony, several days of
3 trial. The trust was not a party to this action.

4 THE COURT: We had six days specifically. I
5 reviewed all six days.

6 MR. KARACSONYI: Midstream Mr. Nelson brings in the
7 trust and says, this is -- this is property which doesn't
8 belong to either party, the trust is here to protect its
9 assets. That's where the third party complaint comes in and
10 why we believe the third party complaint is necessary.
11 Everything that Your Honor said that you intend on doing is
12 exactly correct. But in order to do all those things, we
13 assert that this third party complaint is necessary.

14 Now, if Your Honor goes with your initial
15 inclinations you indicated here today and strikes the third
16 party complaint, what's going to happen? We're going to go
17 file or may go file in another court. You're going to be
18 deciding, as you indicated, whether or not the parties have a
19 right to these properties that are currently held by the ELN
20 Trust. Meanwhile, in another courtroom, the same arguments
21 over whether or not the ELN Trust is a valid or invalid trust
22 and the assets can be invaded by these parties or by This
23 Court are going to be -- being argued. In order to do the
24 things that Your Honor has indicated that it's going to do,

1 these issues are necessarily going to be litigated.

2 Your Honor has already indicated today and at the
3 last hearing and throughout that there's no doubt in your mind
4 that Mr. Nelson was exerting complete control over the assets
5 of the ELN Trust without any -- without any checks or balances
6 that he was in complete control, that he was asking Ms. Nelson
7 to sign documents and transfer things and she was just signing
8 off on them.

9 THE COURT: I will note on that that's based on the
10 testimony I heard to date. So we didn't hear all the
11 testimony. Plus, with the trust they did have a distribution
12 trustee. However, I did review that. I believe that he had
13 veto power over the distribution trust if he did it in
14 writing. So, to that extent, I agree with you on that. But
15 just as to point on that from what we heard from Attorney Bare
16 that basically from his testimony and Ms. Lynita, Mr. Nelson
17 -- and Eric that basically Mr. Nelson was the brains behind
18 that as far as business. He made all those decisions and Ms.
19 Lynita signed what she was told to sign because she trusted
20 him and he was a very good businessman. No doubt about it.

21 So just -- I just want to put that on reference that
22 I haven't made my mind up at all, the issue based on the
23 testimony I heard so far to be my preliminary findings up to
24 this point. I'm sorry, Counsel. You can --

1 MR. KARACSONYI: And I didn't mean to misconstrue
2 The Court's findings but simply --

3 THE COURT: Yeah.

4 MR. KARACSONYI: -- the statements been stated so
5 far.

6 THE COURT: Yeah.

7 MR. KARACSONYI: The Court is necessarily then going
8 to decide where your intent is if The Court decides that way
9 ultimately that that is, in fact, the case. The Court will
10 find that these properties that this trust, that no matter how
11 it's titled -- these properties are titled in the name of this
12 trust -- that these properties are really community property.
13 To do that, again, then would be -- the proper way would be to
14 keep the third party complaint. You're going to make findings
15 that basically this is his alter ego, that this is something
16 that -- it's really just a sham, it doesn't exist.

17 If you dismiss the third party complaint and this
18 proceeds in another courtroom, you may be making those
19 findings, but at the same time, they're going to come back
20 here and say, look, Your Honor, we're litigating whether this
21 trust is valid or invalid. The same trial, the same testimony
22 is going to be going on. And they're going to come back here
23 and say that if the trust is found to be valid by another
24 court, despite your findings that it was treated as his alter

1 ego or he got exclusive control over the property, that,
2 sorry, you are prohibited from doing exactly what you intended
3 to do.

4 There is no doubt from the law that This Court has
5 subject matter jurisdiction to hear the claims that we set
6 forth. The Nevada Constitution provides Article 6, Section 6,
7 that the District Courts in the several judicial districts of
8 the state have original jurisdiction of all cases excluded by
9 law from the original jurisdiction of justice courts. They
10 also have final appellate jurisdiction, et cetera, et cetera.
11 The legislature may provide, by law, for referees in District
12 Courts and be the establishment of a Family Court as a
13 division of any District Court and may prescribe its
14 jurisdiction.

15 Now, prescribe its jurisdiction. Landreth v. Malik
16 was that case. Landreth v. Malik, as they acknowledge, said
17 that a District Court judge in the family district division
18 has the same Constitutional power and authority as any
19 District Court judge, that the legislature could not revoke
20 the power of a judge sitting in the Family Court division to
21 hear proceedings that lie outside the Family Court's
22 jurisdiction as prescribed by the Nevada legislature because
23 the judge sitting in the Family Court has the Constitutional
24 powers of a District judge.

1 THE COURT: They made us real District Court judges
2 which we appreciated.

3 MR. KARACSONYI: Exactly. They confirmed --

4 THE COURT: Not just secondary family judges.

5 MR. KARACSONYI: -- that you were a District Court
6 judge just as much as the judge who may be administratively
7 assigned probate matters as a District judge, just as much as
8 the judge that is assigned criminal matters as a District
9 judge and that each of you have the same power as the other.
10 There's no doubt about that despite their arguments to the
11 contrary.

12 Now you go to the Barelli case. And the Barelli
13 case says that -- and this was prior to Landreth -- that you
14 should exercise the jurisdiction and can exercise jurisdiction
15 which is related to your powers, to your authority to those
16 prescribed by the Nevada legislature. The Nevada legislature
17 has prescribed for you to decide the community property and
18 separate property nature of the property that's before you.

19 If you dismiss the third party complaint, that's
20 going to be occurring in a different courtroom. We are not
21 going to save time and money. We are going to lose more time
22 and more money. You're going to be handcuffed because they're
23 going to argue that you're handcuffed because these
24 proceedings are proceeding in another courtroom. The