

## **EXHIBIT “E”**

## ACKNOWLEDGMENT

I hereby acknowledge that the Notice of Removal of Trustee of the Frei Irrevocable Trust was personally delivered to Premier Trust, Inc., on November 13, 2014.

Name:

Title:

Regina Hoover  
Office Manager



CLERK OF THE COURT

1 NEO  
2 DOUGLAS D. GERRARD, ESQ.  
3 Nevada Bar No. 4613  
4 Dgerrard@Gerrard-cox.com  
5 RICHARD D. CHATWIN, ESQ.  
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8 GERRARD COX LARSEN  
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10 Henderson, Nevada 89074  
11 W: (702)796-4000  
12 F: (702) 796-4848  
13 *Attorney for Premier Trust, Inc.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

14 In the Matter of ) CASE NO.: P-09-065257-T  
15 )  
16 FREI IRREVOCABLE TRUST dated ) DEPT NO.: 26  
17 October 29, 1996 )  
18 )  
19 )  
20 )  
21 )

22 NOTICE OF ENTRY RE: FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
23 ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS OF  
24 TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM  
25 REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY  
26 DUTIES, AND TO RELEASE  
27 JURISDICTION OF THE TRUST  
28

29 NOTICE IS HEREBY GIVEN that a FINDINGS OF FACT, CONCLUSIONS OF LAW,  
30 AND ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS  
31 OF TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM  
32 REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY  
33 DUTIES, AND RELEASE JURISDICTION OF THE TRUST, was entered herein on the  
34 10<sup>th</sup> day of April, 2015. A copy of said Order is attached hereto as Exhibit "A".

35 DATED this 14<sup>th</sup> day of April, 2015.

GERRARD, COX & LARSEN

/s/ Douglas D. Gerrard, Esq.  
Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
2450 St. Rose Pkwy., Suite 200  
Henderson, NV 89074

1 CERTIFICATE OF MAILING

2 I hereby certify that I am an employee of GERRARD, COX & LARSEN, and that on the 14<sup>th</sup> day  
3 of April, 2015, I served a true and correct copy of **NOTICE OF ENTRY RE: FINDINGS OF**  
4 **FACT, CONCLUSIONS OF LAW, AND ORDER DENYING STEPHEN BROCK'S**  
5 **PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL COMPLIANCE WITH**  
6 **TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE, TO COMPEL**  
7 **REDRESS OF BREACH OF FIDUCIARY DUTIES, AND RELEASE JURISDICTION**  
8 **OF THE TRUST** by e-serving a copy on all parties listed in the Master Service List pursuant  
9 to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

10  
11 Elliot S. Blut, Esq.  
12 Blut & Campaign  
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13 Russell Geist, Esq.  
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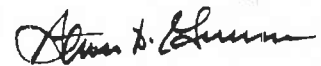
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21  
22 s. Kanani Gonzales  
23 Kanani Gonzales, An employee of  
24 GERRARD COX & LARSEN  
25  
26  
27  
28

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

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*Attorneys for Premier Trust, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

FREI IRREVOCABLE TRUST dated  
October 29, 1996

Case No.: P-09-065257-T

Dept. No.: 26

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING STEPHEN  
BROCK'S PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL  
COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE,  
TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE  
JURISDICTION OF THE TRUST**

THIS MATTER, having come on for oral argument before the Honorable Gloria Sturman on January 14, 2015, January 26, 2015 and March 11, 2015 on STEPHEN BROCK's Petition to Construe Terms of Trust, To Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust filed on November 19, 2014, with appearances made by STEPHEN BROCK, who appeared through his counsel, JONATHAN W. BARLOW, ESQ. of CLEAR COUNSEL LAW GROUP, PREMIER TRUST, INC., by and through its counsel, DOUGLAS D. GERRARD, ESQ. and RICHARD D. CHATWIN, ESQ. of the law firm GERRARD COX LARSEN, and LAWRENCE HOWE and ELIZABETH MARY FREI, by and through their counsel, RUSSEL J. GEIST, ESQ. of the law firm HUTCHISON & STEFFEN.

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After reviewing the pleadings filed in this matter, including all supplements filed after the January 26, 2015 hearing and before the March 11, 2015 hearing, and considering all evidence and testimony presented, this Court makes the following findings of fact, conclusions of law and orders:

I.

FINDINGS OF FACT

A. The Frei Irrevocable Trust

1. On October 29, 1996, Dr. Emil Frei, III ("Dr. Frei") and Adoria B. Frei ("Mrs. Frei"), as husband and wife (jointly the "Settlers"), created the FREI IRREVOCABLE TRUST (the "Trust").

2. The Trust was irrevocable from its inception and named all five of Dr. Frei's children, who were from a previous relationship, and all five of Mrs. Frei's children, who were from a previous relationship, as equal beneficiaries.

3. The Trust showed an intent by Dr. Frei and Mrs. Frei to be fair and equal with all ten children in their estate planning.

4. Stephen Brock ("Stephen") is a son of Mrs. Frei and, therefore, a named beneficiary of the Trust.

5. The Trust contained a spendthrift clause at Article 13, § 3.

6. Mrs. Frei died on January 28, 2009.

B. The Amendment to the Frei Irrevocable Trust and Premier Becoming Trustee

7. On April 17, 2009, Stephen, by and through his counsel, Daniel V. Goodsell, Esq., filed a Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29, 1996, for Order Assuming Jurisdiction Over the Trust, and for an Order Reforming Terms of the Trust (the "2009 Petition").

8. In the 2009 Petition, Stephen sought to amend Article Seven of the Trust to allow a beneficiary of the Trust to withdraw all of their beneficial interest in the Trust after the death of the second of the Settlers to die by making a written request to the Trustee. Stephen's 2009 Petition to modify the Trust was made after one of the Settlers had died.

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9 Probate Commissioner Wesley Yamashita issued a Report and Recommendation  
10 approving the 2009 Petition on May 20, 2009. The Report and Recommendation was never  
11 objected to and an Order approving the Report and Recommendation was entered by this Court on  
12 June 12, 2009 (the "June 2009 Order"). The June 2009 Order modified the Trust.

13 10. On September 14, 2009, Premier Trust, Inc. ("Premier Trust") executed a written  
14 Acceptance of Trustee to become a Co-Trustee of the Trust.

15 C. Litigation And Global Settlement Between Dr. Frei and Stephen

16 11. On April 24, 2009, Dr. Frei, one of the Settlers of the Trust, filed a Complaint in  
17 Clark County, Nevada District Court against Stephen and entities controlled by Stephen (Case No.  
18 A-09-588750-C) (hereinafter the "2009 Lawsuit"). In the 2009 Lawsuit, Dr. Frei alleged that  
19 Stephen exploited Dr. Frei, breached fiduciary duties towards Dr. Frei, and converted more than  
20 \$500,000.00 from him.

21 12. On March 31, 2010, in the middle of a jury trial of the 2009 Lawsuit, Stephen,  
22 through his attorney of record, Dana A. Dwiggins, Esq., entered into a global settlement agreement  
23 with Dr. Frei, through his attorney of record, Elliot S. Blut, Esq., before the Honorable Kenneth C.  
24 Cory (hereinafter the "Settlement").

25 13. The Settlement immediately ended not only the 2009 Lawsuit, but also resolved  
26 several other cases in the Clark County, Nevada District Court involving Dr. Frei and Stephen,  
27 including case numbers P-09-065235-E, A-10-609292-C, and A-10-607772-C.

28 14. The Settlement was carefully negotiated and drafted by Stephen and Dr. Frei and  
included the following terms, covenants and conditions:

- 29 (i) Stephen promised to repay Dr. Frei (through the Emil Frei, III Trust, a trust  
30 created by Dr. Frei which was revocable at the time the Settlement was  
31 entered into) the total sum of \$415,000.00 (identified as \$175,000, \$150,000  
32 and \$90,000 respectively in the Settlement documents) by making payments  
33 in the amount of \$5,000.00 per month, beginning on June 1, 2010, over a  
34 three year period, with the principal balance earning interest at the rate of  
35 prime plus 1% and a balloon payment being made at the end of the three year  
36 term (hereinafter the "Settlement Payment Obligation").



*The Order Approving Settlement Agreement provided  
"said amount shall be secured by"*

(ii) A Stephen agreed to pledge his full beneficial interest in the Trust as security in the event that he failed to make the full Settlement Payment Obligation to Dr. Frei. *See Order dated 6/18/2010 case # P-09-065235*

(iii) The Settlement called for a 5% default interest rate in the event Stephen Defaulted on the Settlement Payment Obligation.

15. A transcript of a March 31, 2010 hearing before the Honorable Kenneth C. Cory in the 2009 Lawsuit and an Order Approving Settlement Agreement entered with Commissioner Wesley Yamashita in case P-09-065235-E on June 18, 2010 clearly outline the terms, conditions, nature, details, and covenants of each party involved in the Settlement. This 2009 Lawsuit transcript and June 18, 2010 Order also clearly show that Dr. Frei and Stephen understood and fully agreed with all of the terms, conditions, nature, details and covenants of the Settlement, and that each of them intended to modify the Trust to permit (i) Stephen to secure his Settlement obligations with his beneficiary rights under the Trust, and (ii) the Settlement amounts to be paid to Dr. Frei from the Trust if Stephen failed to make the payments outlined in the Settlement. This March 31, 2010 Settlement, as confirmed by the June 18, 2010 Order, constituted an amendment and a modification to the terms of the Trust, which amendment and modification only affected Stephen's beneficiary interest in the Trust (the "2010 Trust Amendment"). This 2010 Trust Amendment was consented to by the only surviving Settlor, Dr. Frei, and the only beneficiary whose interest was impacted, Stephen.

*The Settlement Agreement provided security*

16. ~~Dr. Frei wanted the Settlement Payment Obligation to be secured as part of the for payment through the pledge of Stephen's interest in the Trust.~~  
Settlement in light of Dr. Frei's belief that Stephen had converted money from him previously, and was unwilling to settle with Stephen without the certainty of payment from the Trust.

17. All parties, including Dr. Frei and Stephen, agreed to and relied upon all of the terms, conditions, nature, details and covenants of the Settlement, including Stephen's promise to pledge his beneficial interest in the Trust as security and collateral in the event he failed to make the Settlement Payment Obligation, when they agreed to terminate all litigation between them, including Clark County, Nevada District Court cases A-09-538750-C, P-09-065235-E, A-10-609292-C, and A-10-607772-C.

D. Dr. Frei's Death, Stephen's Default and Payments Made by Premier Trust

18. Dr. Frei died on April 30, 2013.

19. Following Dr. Frei's death, all of the beneficiaries of the Trust, except Stephen, received an outright distribution from the Trust under the powers given to them in the June 2009 Order in an amount equal to all of their beneficial Trust interest, less approximately \$1,725.49 each (equaling approximately \$15,529.39 total among these nine beneficiaries), which has been withheld by Premier Trust as reserves for various future Trust expenses.

20. From the time Stephen entered into the Settlement until the present, he has only made a single \$5,000.00 payment towards his Settlement obligations, which was done on or shortly after the Settlement was finalized before Judge Kenneth C. Cory on March 31, 2010.

21. Following Dr. Frei's death, Premier Trust, in following the terms of the Trust, as modified by the Settlement, made payments to the Emil Frei, III Trust from Stephen's beneficial interest in the Trust in the following amounts and on the following dates:

- (i) \$100,000.00 on October 9, 2013.
- (ii) \$100,000.00 on November 4, 2013.
- (iii) \$100,000.00 on January 10, 2014.

22. After Premier Trust made these three \$100,000.00 payments, Stephen sought to remove Premier Trust as Trustee of the Trust under Article Ten, Section 2 (page 10-1) of the Trust Agreement.

II.

CONCLUSIONS OF LAW

1. In general, the law allows a settlor of an irrevocable trust and a beneficiary of that same irrevocable trust to agree to amend the trust's terms. See, e.g., Cal. Prob. Code § 15404; Restatement (Second) of Trusts § 338 (1959). See also, Musick v. Reynolds, 798 S.W.2d 626, 630 (Tex. App. 1990).

2. However, there is no controlling statute or common law in Nevada on the issue of whether a settlor and beneficiary of an irrevocable trust can agree to amend that trust. There is

1 further no controlling law in Nevada on whether such an amendment would be permitted if one of  
2 the original settlors to the irrevocable trust had died before the amendment.

3 3. This Court uses its equitable powers to determine that under the unique  
4 circumstances of this case, an amendment to the Trust occurred on March 31, 2010 when Dr. Frei,  
5 the surviving settlor, and Stephen, the only Trust beneficiary whose interest is affected, agreed to the  
6 Settlement and agreed to permit Stephen to pledge his interest in the Trust as security therefore. As  
7 a matter of equity, the Settlement between Dr. Frei and Stephen constituted a valid amendment to  
8 the terms of the Trust because the intent of Dr. Frei and Mrs. Frei was followed through the terms of  
9 the Settlement. Some, but not all, of the factors giving rise to this Court's finding that the  
10 Settlement between Dr. Frei and Stephen constituted a valid amendment to the terms of the Trust are  
11 as follows:

- 12 (i) The Court finds that Dr. Frei, as a Settlor of the Trust, was seeking to recover  
13 from Stephen, who is a beneficiary of the Trust, money which Dr. Frei  
14 alleged Stephen had wrongfully converted and which was to be divided  
15 among all of Dr. and Mrs. Frei's children, through the litigation which ended  
16 with the Settlement. The Settlement was secured through a modification of  
17 the Trust at the time of the Settlement to permit Stephen to repay Dr. Frei  
18 what had allegedly been fraudulently taken by Stephen with Stephen's  
19 beneficial interest in the Trust, and as Stephen allegedly had nothing else, the  
20 modification to the Trust was vital to carrying out the intent of both Dr. and  
21 Mrs. Frei.
- 22 (ii) It was the intent of both Dr. Frei and Mrs. Frei that they wanted to treat their  
23 children as equal beneficiaries in their estate plans, including the Trust. Had  
24 Stephen been able to keep the monies he allegedly took fraudulently from Dr.  
25 Frei it would have disadvantaged the other nine children and would have been  
26 both unequal and unfair.
- 27 (iii) The Settlement affected only Stephen's beneficial interest in the Trust, which  
28 is fair to all other beneficiaries of the Trust and consistent with the manifested  
intent of Dr. Frei and Mrs. Frei in their estate planning.
- (iv) The 2010 Trust Amendment was agreed to by both Dr. Frei and Stephen and  
was relied upon by Dr. Frei to resolve all the pending lawsuits.
- (v) Dr. Frei, all the other Trust beneficiaries, and the Co-Trustees of the Trust  
then relied upon the 2010 Trust Amendment for many years, without  
objection from Stephen, until after Dr. Frei died and money had been  
distributed from the Trust in reliance upon the 2010 Trust Amendment.

4. Nevada recognizes the doctrine of judicial estoppel. See, e.g., Marcuse v. Del Webb Communities, Inc., 163 P.3d 462 (Nev. 2007). There are five elements of judicial estoppel: (i) a party has taken two positions, (ii) the positions were taken in judicial or quasi-judicial administrative proceedings, (iii) the party was successful in asserting the first position (i.e., the court adopted the position or accepted it as true), (iv) the two positions are totally inconsistent, and (v) the first position was not taken as a result of fraud or mistake. Id., 163 P.3d at 663. A party asserting judicial estoppel does not need to show all of these elements exist to successfully assert the doctrine. Mainor v. Nault, 120 Nev. 750, 765 (Nev. 2004) (“Although not all of these elements are always necessary, the doctrine generally applies when...”). A party may be estopped under the doctrine of judicial estoppel “merely by the fact of having alleged or admitted in his pleadings or former pleadings the contrary of the assertion sought to be made.” Brelliant v. Preferred Equities Corp., 918 P.2d 314, 317 (Nev. 1996) (quoting Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549, 396 P.2d 850, 854 (1964)). The “mistake” portion of the fifth element of judicial estoppel is for mistakes of fact only, not mistakes of law. Vaile v. Dist. Ct., 118 Nev. 262, 44 P.3d 506, 514 (Nev. 2002) (quoting Sterling Builders, Inc., 80 Nev. at 549-50, 396 P.2d at 854 (“According to the rule of judicial estoppel, a party who has stated an oath in a prior proceeding, ‘as in a pleading,’ that a given fact is true may not be allowed to deny the same fact in a subsequent action”)).

5. Here, all of the elements of the doctrine of judicial estoppel apply in this case against Stephen. Stephen took two inconsistent positions (that he could amend the terms of the Trust through the Settlement with Dr. Frei but now claims it is impossible to do and is void *ab initio*), both of the inconsistent positions were taken in judicial or quasi-judicial administrative proceedings, Stephen was successful in amending the terms of the Trust in regards to his beneficial interest in it with Dr. Frei through the Settlement in 2010, and Stephen, who was represented by competent counsel, did not enter into the Settlement due to any ignorance, fraud or mistake. In summary, Stephen cannot enter into the Settlement with Dr. Frei in 2010, promise to make the Settlement Payment Obligation, secure that those payments with his beneficial interest in the Trust, and then later claim that he did not want to agree to the Settlement or that what he agreed to was impossible or void *ab initio*.

6. Dr. Frei justifiably relied upon Stephen's covenants and promises made in the Settlement, including Stephen's agreement to pledge his full beneficial interest in the Trust as security in the event he failed to fully pay the Settlement Payment Obligation.

7. The justifiable reliance by Dr. Frei in entering into the Settlement with Stephen judicially estops Stephen and the arguments he has made before this Court. The doctrine of judicial estoppel exists to prevent a party from taking a benefit of settling a case, telling four judges you want to settle, and then later try to void those settlements. To allow Stephen to void the Settlement would completely disregard his former promises to Dr. Frei. Therefore, Stephen cannot argue the Trust could not be amended through the 2010 Settlement.

8. Nevada Revised Statutes Chapter 166's spendthrift protections, including those at N.R.S. § 166.120, apply between the interest of a trust beneficiary and third parties, not between a settlor of a trust and a beneficiary of that same trust. Additionally, there are no public policy considerations that prevent a settlor of an irrevocable trust from amending that trust with the consent of a beneficiary where the trust has a spendthrift clause.

9. Premier Trust has not breached any fiduciary duty while acting as Trustee of the Trust. Stephen agreed to the Settlement, Settlement Payment Obligation, and the amendment of the terms of the Trust by virtue of the Settlement and Settlement Payment Obligation and Premier Trust has properly followed the terms of the Settlement since becoming Trustee of the Trust.

10. Premier Trust had no obligation or duty to make any further inquiry into the Settlement before making the three \$100,000 payments to the Emil Frei, III Trust after Dr. Frei's death. Furthermore, Premier Trust had the right to rely upon the terms of the Settlement, including the Settlement Payment Obligation, and the court orders and court transcript from the 2009 Lawsuit when it made the three \$100,000.00 payments to the Emil Frei, III Trust on October 9, 2013, November 4, 2013 and January 10, 2014. See Restatement (Second) of Trusts § 216 (1959). Therefore, the three \$100,000.00 payments were properly made by Premier Trust from Stephen's beneficial interest in the Trust.

11. It is proper for Premier Trust to satisfy the Settlement Payment Obligation to the Emil Frei, III Trust with the remaining monies it has in the Trust that are part of Stephen's beneficial interest.

12. Under the clear terms of the Trust Agreement, all ten children of Dr. Frei and Mrs. Frei are presently income beneficiaries of the Trust, pursuant to Article Twelve, Section 3, Part f (page 12-4 of the Trust Agreement). Because a majority of the ten children have not sought to remove Premier Trust as a Trustee of the Trust (as is required under Article Ten, Section 2 of the Trust Agreement at page 10-1) it is proper for Premier Trust to remain as Trustee of the Trust.

### III.

#### ORDER

Based upon the above findings of fact and conclusions of law, and good cause appearing:

IT IS HEREBY ORDERED that Stephen's November 19, 2014 Petition to Construe Terms of Trust, to Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust is denied in its entirety.

IT IS FURTHER ORDERED that Premier Trust shall use Stephen's beneficial interest in the Trust to satisfy Stephen's remaining Settlement Payment Obligation to the Emil Frei, III Trust, as was agreed to previously in the Settlement.

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1 IT IS FURTHER ORDERED that Premier Trust should remain as Trustee of the Trust.

2 DATED this 10<sup>th</sup> day of April, 2015.

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*[Signature]*  
DISTRICT COURT JUDGE

Respectfully Submitted By:

GERRARD COX LARSEN

*[Signature]*  
Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
Richard D. Chatwin, Esq.  
Nevada Bar No. 10870  
2450 St. Rose Parkway, Suite 200  
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(702) 786-4000 • (702) 786-4700

# **EXHIBIT “D”**



**NOTICE OF REMOVAL OF TRUSTEE**

**OF THE**

**FREI IRREVOCABLE TRUST,  
dated October 29, 1996**

**THIS NOTICE OF REMOVAL OF TRUSTEE** of the Frei Irrevocable Trust, dated October 29, 1996, is made this 12<sup>th</sup> day of November, 2014.

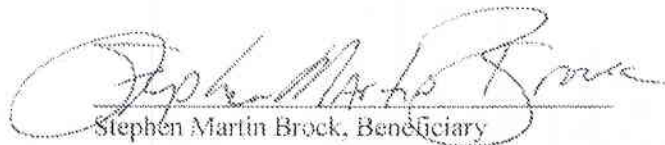
**WHEREAS**, Emil Frei, III, and Adoria B. Frei as Trustmakers established the Frei Irrevocable Trust on October 29, 1996 (the "Trust");

**WHEREAS**, Stephen Martin Brock is the only beneficiary of the Trust now eligible to receive mandatory or discretionary distributions of net income under the Trust; and,

**WHEREAS**, Article Ten, Section 2 reserves to Stephen Martin Brock the power to remove any trustee of the Trust, and he now desires to exercise such right.

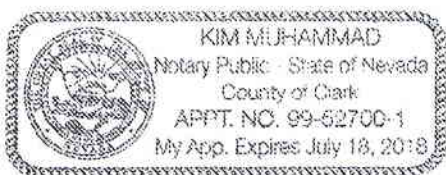
**NOW, THEREFORE**, Stephen Martin Brock provides this written notice to Premier Trust, Inc., that Premier Trust, Inc., is immediately removed as trustee of the Trust. Premier Trust, Inc., is notified that it is immediately divested of all authority as trustee of the Trust and that it shall immediately cease all activities as trustee of the Trust. This Notice of Removal of Trustee shall be effective immediately upon execution and delivery of this Notice.

**THIS NOTICE OF REMOVAL OF TRUSTEE** of the Frei Irrevocable Trust is accepted, made, and executed by Stephen Martin Brock as the beneficiary of the Trust in the State of Nevada on the day and year first above written.

  
Stephen Martin Brock, Beneficiary

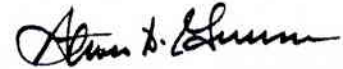
STATE OF NEVADA        }  
                                      } ss.  
COUNTY OF CLARK        }

On November 12, 2014, before me, Kim Muhammad, personally appeared **Stephen Martin Brock**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this Notice of Removal of Trustee, and acknowledged that he executed it. I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.



Kim Muhammad  
NOTARY PUBLIC

# **EXHIBIT “C”**



CLERK OF THE COURT

**ORDER**

DANA A. DWIGGINS, ESQ.  
Nevada Bar No. 7049  
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Attorneys for STEPHEN BROCK,  
Trustee of the Adoria S. Frei Trust - 1999

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of

ADORIA S. FREI TRUST - 1999, dated,  
September 14, 1999

Case No.: P-09-065235-E  
Dept No.: PC1

Date of Hearing: June 4, 2010  
Time of Hearing: 9:30 p.m.

**ORDER APPROVING SETTLEMENT AGREEMENT**

This matter came on before Probate Commissioner Wesley Yamashita for a status hearing on June 4, 2010, regarding settlement between the parties relating to the Adoria Frei Trust - 1999, dated September 14, 1999, as amended, and the Estate of Adoria Frei. Dana A. Dwiggins, Esq., of the law firm SOLOMON DWIGGINS FREER & MORSE, LTD., appeared as counsel for Stephen Brock, Trustee of the Adoria Frei Trust - 1999, dated September 14, 1999, as amended; and Christopher J. Phillips, Esq., of the law firm TRENT, TYRELL & PHILLIPS, appeared as counsel for Peter Brock, the Personal Representative of the Estate of Adoria Frei. The Court hearing the representations of counsel and having reviewed the pleadings and attachments thereto, including that certain Minute Order entered by the Honorable Judge Kenneth C. Cory in Case No. A-09-588750-C, the Court finds as follows:

1. On March 31, 2010, the parties, namely Stephen Brock, individually, as the prior attorney in fact for Emil Frei, III and Adoria Frei, and as beneficiary and Successor Trustee of the Adoria Frei Trust, the Adoria Trust, and Public Company Management Corporation and its affiliates and subsidiaries, Emil Frei, III, individually and as beneficiary of the Adoria Frei Trust, beneficiary of the Estate of Adoria Frei, as Trustee and as beneficiary of the Emil Frei, III Trust, 1999 Trust, as amended ("Emil Frei Trust"), Emil

1 Frei, IV, as attorney in fact for Emil Frei, III, Lawrence Howe, individually, and Emil Frei, IV, Nancy Frei,  
2 Elizabeth Frei, Judith Frei and Nancy Frei, individually and in their capacities as beneficiaries of the Emil  
3 Frei Trust, reached a global settlement agreement pertaining to the instant action as well as Eighth Judicial  
4 District Court Case Nos. A-09-588750-C, A-10-A609292-C and A-10-607772-C. The substantive terms  
5 of the settlement agreement were placed on the record in open court before the Honorable Kenneth C. Cory  
6 and became the subject of a minute order ("Settlement Agreement"). A copy of the transcript of such minute  
7 order was submitted to this Court for approval. The substantive terms of the agreement are as follows:

8           a.       The Emil Frei Trust shall receive assets in the total amount of \$400,000 consisting  
9 of (i) the Bank of America Investment Account Nos. L56-070602 and L56-070610, less the PCMC stock  
10 held in such accounts which shall be assigned to the Adoria Trust; Stephen Brock represents that such  
11 account has an approximate balance of \$190,000, as of the March 2010, statement, less the value of the  
12 PCMC stock; (ii) the surrender value of a New York Life Insurance Policy 43 926 238 with a death benefit  
13 of \$180,000 (the current cash value of which is approximately \$140,000); and (iii) to the extent the  
14 foregoing amounts are less than \$400,000, the difference in such amount shall be paid from Snell Wilmer,  
15 LLP's Trust Account. All remaining amounts held in Snell Wilmer, LLP's Trust Account shall be paid to  
16 the Adoria Frei Trust. Dr. Frei shall cooperate, if necessary, in surrendering the foregoing life insurance  
17 policy.

18           b.       Subject to Paragraph 1(d) herein, Stephen Brock, individually, will pay a total sum  
19 in the amount of \$175,000 to the Emil Frei Trust. Said amount shall be treated as repayment of any loan  
20 made by the Adoria Frei Trust to Stephen Brock.

21           c.       Subject to Paragraph 1(d) herein, Stephen Brock, individually, will pay a total sum  
22 in the amount of \$150,000 to the Emil Frei Trust and Stephen Brock, individually and/or the Adoria Frei  
23 Trust will pay an additional sum of \$90,000 to the Emil Frei Trust, for a total of \$240,000.

24           d.       The amounts set forth in Paragraphs 1(b) and 1(c) herein, shall be paid with interest  
25 commencing on June 1, 2010, at the rate of prime interest plus one percent per annum, payable over the  
26 course of three (3) years at \$5,000 per month, with the outstanding balance paid on May 31, 2013, unless  
27 otherwise paid sooner. Said amount shall be secured by Stephen Brock's interest in The Frei Irrevocable  
28 Trust, dated October 29, 1996 ("Joint Life Insurance Trust"), which shall not be disclaimed by Stephen

1 Brock. Stephen Brock represents that he has not previously assigned or otherwise disclaimed his interest  
2 under said life insurance trust. In the event the joint life insurance policy held by the Joint Life Insurance  
3 Trust is sold, then any amounts received by Stephen Brock pursuant to the terms of the Joint Life Insurance  
4 Trust may, in the sole discretion of Stephen Brock, be applied to the then outstanding principal balance, or  
5 in the event Stephen Brock elects not to apply such amount to the then outstanding principal, Stephen Brock  
6 shall provide adequate replacement security for the then outstanding principal balance. In the event Stephen  
7 Brock defaults on any payments there shall be imposed a penalty in the amount of five percent per annum  
8 of such defaulted payment.

9 e. Stephen Brock, individually, will pay an additional sum in the amount of \$100,000  
10 to the Emil Frei Trust. Said amount shall be repaid with interest at the rate of six percent per annum,  
11 payable over the course of one (1) year at \$5,000 per month, with the first payment and interest commencing  
12 on June 1, 2013, and the outstanding balance paid on May 31, 2014, unless otherwise paid sooner.

13 f. Stephen Brock, individually, will pay an additional sum in the amount of \$100,000  
14 to the Emil Frei Trust. Said amount shall be repaid with interest at the rate of six percent per annum,  
15 payable over the course of one (1) year at \$5,000 per month, with the first payment and interest commencing  
16 on June 1, 2014, and the outstanding balance paid on May 31, 2015, unless otherwise paid sooner.

17 g. All real property held in the name of Emil Frei, III, Adoria Frei and/or the Adoria Frei  
18 Trust, including but not limited to certain real property located at 5780 El Camino Road, Las Vegas, Nevada,  
19 10802 Kenilworth Avenue, Garrett Park, including the home and the lot, and 401 Grosvenor Place,  
20 Rockville, shall remain in the Adoria Frei Trust. The Adoria S. Frei Trust shall make reasonable efforts  
21 to refinance such properties so as to remove Emil Frei, III's name from any loans thereon, if any. In the  
22 event there is a foreclosure on the El Camino property that results in a deficiency judgment against Emil  
23 Frei, III, individually, said amount shall be paid from Stephen Brock's interest in the Joint Life Insurance  
24 Trust, which shall not be disclaimed by Stephen Brock.

25 h. Emil Frei, III shall be responsible for any and all fees and costs incurred by Fredrick  
26 Waid, Esq., as the Guardian Ad Litem for Emil Frei, III, including but not limited to fees incurred by  
27 Hutchison & Steffen on his behalf.

28 i. The outstanding 2008 tax liability relating to the 1040 filed on behalf of Emil Frei,

1 III and Adoria Frei shall be equally split between Emil Frei, III and the Adoria Frei Trust, provided, however,  
2 that the Adoria Frei Trust shall be entitled to make payments on such tax liability.

3 j. Emil Frei, III's interest in certain litigation involving Grand Canyon Construction and  
4 Development and Stagecoach Homes, LLC, in Case No. A520276, shall be assigned by Emil Frei, III to  
5 Stephen Brock, individually.

6 k. Neither Emil Frei, III, Elizabeth Frei, Emil Frei, IV, Judith Frei, Lawrence Howe,  
7 Nancy Frei and/or Alice Frei shall directly or indirectly disparage Stephen Brock, Public Company  
8 Management Corporation, Go Public Today, or any of their affiliates or subsidiaries, and shall not file or  
9 make any complaint or cause to be filed or make any complaint by any other third party with the Security  
10 Exchange Commission or any other governmental agency, state or federal, relating to Public Company  
11 Management Corporation, Go Public Today, or any of their affiliates or subsidiaries. Emil Frei, III,  
12 Elizabeth Frei, Emil Frei, IV, Judith Frei, Lawrence Howe, Nancy Frei and/or Alice Frei additionally  
13 represent that any complaints or inquiries previously made by any of them, either directly or indirectly, to  
14 any other governmental agency, state or federal, will be withdrawn and no further complaints or inquiries  
15 will be made by any of them, either directly or indirectly. To the extent any costs are incurred by Stephen  
16 Brock, Public Company Management Corporation, Go Public Today, or any of their affiliates or subsidiaries  
17 subsequent to the Settlement as a result of any complaint or inquiry made to any governmental agency, state  
18 or federal, then such costs shall be deducted from the amounts owed or paid by Stephen Brock pursuant to  
19 the terms of the Settlement. Any previously assessed costs are not included in this paragraph.

20 l. Except as to the terms provided herein, Stephen Brock, individually, as the prior  
21 attorney in fact for Emil Frei, III and Adoria Frei, and as beneficiary and Successor Trustee of the Adoria  
22 Frei Trust, any and all of his heirs, the Adoria Trust, and Public Company Management Corporation and its  
23 affiliates and subsidiaries, on the one hand, and Emil Frei, III, individually and as beneficiary of the Adoria  
24 Frei Trust, beneficiary of the Estate of Adoria Frei, as Trustee and as beneficiary of the Emil Frei, III Trust,  
25 1999 Trust, as amended, Emil Frei, IV, as attorney in fact for Emil Frei, III, Lawrence Howe, Emil Frei, IV,  
26 Nancy Frei, Elizabeth Frei, Judith Frei and Alice Frei, and any and all of their heirs, on the other hand, shall  
27 be granted a full mutual general release as to one another as to any matters concerning the Adoria Frei Trust,  
28 the Emil Frei Trust, Adoria Frei and/or Emil Frei, III and Case Nos. P-09-065235-E, A-09-588750-C, A-10-



1 A609292-C and A-10-607772-C.

2 m. Emil Frei, III shall waive any further interest in the Adoria Frei Trust, including any  
3 right to receive an accounting of such trust, and shall no longer be considered a beneficiary.

4 n. The interest or collateral payments on the joint life insurance policy on the life of Emil  
5 Frei, III held by the Joint Life Insurance Trust with a death benefit of approximately \$8 million shall be paid  
6 equally by Emil Frei, III and/or any of his children, on the one hand, and the Adoria Frei Trust and/or any  
7 of Adoria Frei's children, on the other hand. It is represented that the current interest and collateral  
8 payments are approximately \$30,000 per year. In the event premiums are due on such policy, the parties  
9 shall cooperate with one another in making such payments and the trustee(s) shall be authorized to make  
10 reasonable efforts to obtain premium financing and/or other financing in order to make such payments. In  
11 the event any payments due under the policy are made disproportionate by any beneficiary, then said  
12 beneficiary shall be entitled to reimbursement of said amount from the gross proceeds of the life insurance  
13 policy. Emil Frei, III and/or his children shall be responsible for the premium or interest payments on the  
14 single life insurance policy held in The Emil Frei, III Irrevocable Trust, October 29, 1996.

15 o. All proceedings currently pending before the Probate Court relating to the Adoria Frei  
16 Trust, Case No. P065235-T, shall be dismissed with prejudice.

17 p. Any and all actions initiated by and against Stephen Brock, Public Company  
18 Management Corporation, Emil Frei, III and/or his children in Case Nos. A-09-588750-C, A-10-A609292-C  
19 and A-10-607772-C shall be dismissed with prejudice.

20 q. Stephen Brock shall waive any and all interest in the Emil Frei Trust.

21 r. Stephen Brock, Public Company Management Corporation, NEDAB, or any of their  
22 affiliates, shall not use Emil Frei, III's name or likeness in any manner.

23 s. The parties consent to the filing of petition(s) in the Probate Court, to the extent  
24 necessary, to confirm the Settlement and to confirm that Stephen Brock, individually, shall not disclaim or  
25 otherwise assign his interest in the Joint Life Insurance Trust.

26 t. Stephen Brock will cooperate to provide Emil Frei, III with keys to the storage  
27 facilities in Nevada and Maryland that contain Emil Frei, III's personal property. Stephen Brock represents  
28 that the items from Emil Frei, III's Las Vegas residence were packed by a professional moving company and



1 placed in storage and that he has not removed any items from either storage facilities. Stephen Brock  
2 additionally will provide a copy of any inventory list of the storage facility to Emil Frei, III. Stephen Brock  
3 represents to the best of his knowledge that a certain urn and mosaic table are contained within the Maryland  
4 storage; however, he has not been to Maryland to see such items but he will contact Peter Brock to see if the  
5 urn and mosaic table were taken from the condominium and placed in storage.

6 u. Stephen Brock represents that taxes were withheld from the amounts liquidated or  
7 withdrawn from Jackson National Life Insurance Company and Pacific Life Annuity in 2009.

8 2. That the Estate of Adoria Frei shall be granted a full general release by Emil Frei, III, Emil  
9 Frei, IV, Nancy Frei, Elizabeth Frei, Judith Frei and Nancy Frei.

10 3. The parties have engaged in substantial litigation involving the Adoria Frei Trust, and entered  
11 into the Settlement Agreement to settle and compromise the issues between them.

12 4. That it is in the best interests of the Adoria Frei Trust and the Estate of Adoria Frei to enter  
13 into a compromise with regard to the subject matter of the Settlement Agreement upon the terms and  
14 conditions set forth herein.

15 5. That, as of June 1, 2010, Dana Dwiggins, Esq. is in the possession of a check issued by  
16 Stephen Brock made payable to the Emil Frei Trust in the amount of \$5,000 and that, upon entry of this  
17 Court's order, Ms. Dwiggins shall cause such check to be delivered to counsel for Emil Frei, III.

18 6. That no term of the Settlement Agreement shall be construed as a release of any claim John  
19 Brock, Peter Brock, Vincent Brock and/or Francis Brock may have against Stephen Brock relating to the  
20 Adoria Frei Trust and the Order of this Court further shall not operate as claim preclusion or issue preclusion  
21 of any subsequent action initiated by John Brock, Peter Brock, Vincent Brock and/or Francis Brock, if any,  
22 against Stephen Brock relating to the Adoria Frei Trust.

23 Good cause appearing therefore,

24 IT IS HEREBY ORDERED that the Settlement Agreement, as set forth in the Minute Order entered  
25 before the Honorable Judge Kenneth C. Cory on March 31, 2010, a copy of which is attached hereto as  
26 Exhibit 1 and as further set forth herein as Paragraphs 1(a) through 1(u) shall be, and is hereby, approved  
27 and confirmed by this Court and the terms thereof are incorporated as a part of this Order as if fully set forth  
28 herein.

1 IT IS HEREBY FURTHER ORDERED that, pursuant to the Settlement Agreement of the parties  
2 as set forth in the Minute Order entered by the Honorable Judge Kenneth C. Cory on March 31, 2010,  
3 Stephen Brock, individually, as the prior attorney in fact for Emil Frei, III and Adoria Frei, and as beneficiary  
4 and Successor Trustee of the Adoria Frei Trust, and any and all of their heirs, the Adoria Trust, and Public  
5 Company Management Corporation and its affiliates and subsidiaries, on the one hand, and Emil Frei, III,  
6 individually and as beneficiary of the Adoria Frei Trust, beneficiary of the Estate of Adoria Frei, as Trustee  
7 and as beneficiary of the Emil Frei, III Trust, 1999 Trust, as amended, Emil Frei, IV, as attorney in fact for  
8 Emil Frei, III, Lawrence Howe, Emil Frei, IV, Nancy Frei, Elizabeth Frei, Judith Frei and Alice Frei, and  
9 any and all of their heirs, on the other hand, shall be, and hereby are, granted a full mutual general release  
10 as to one another as to any matters concerning the Adoria Frei Trust, the Emil Frei Trust, Adoria Frei and/or  
11 Emil Frei, III and Case Nos. P-09-065235-E, A-09-588750-C, A-10-A609292-C and A-10-607772-C.

12 IT IS HEREBY FURTHER ORDERED that the Estate of Adoria Frei shall be, and is hereby,  
13 granted a full release by Emil Frei, III, Emil Frei, IV, Nancy Frei, Elizabeth Frei, Judith Frei and Alice Frei.  
14 as to any matters concerning the Adoria Frei Trust, the Emil Frei Trust, Adoria Frei and/or Emil Frei, III.

15 IT IS HEREBY FURTHER ORDERED that that portion of this Court's Order entered August 4,  
16 2009, restraining and enjoining any and all persons from transferring, encumbering, concealing, transmuting  
17 or selling the funds or proceeds of funds withdrawn from Bank of America Investment Services Brokerage  
18 Account Nos. L56-070602 and L56-070610 shall be vacated.

19 IT IS HEREBY FURTHER ORDERED that Stephen Brock, on behalf of the Adoria Frei Trust  
20 and/or Estate of Adoria Frei, Emil Frei, III and/or Emil Frei, IV, as the attorney in fact for Emil Frei, III, shall  
21 be authorized and directed to take any and all action necessary to effectuate the terms of the Settlement  
22 Agreement, including but not limited to executing any and all documents necessary in order to: (1) surrender  
23 the New York Life Insurance Policy No. 43 926 283 so as to allow such amount to be paid to the Emil Frei  
24 Trust; and (2) to transfer the PCMC stock held in Bank of America Investments Accounts Nos. L56-070602  
25 and L56-070610 to the Adoria Frei Trust and, upon transfer of the same, to thereafter transfer Bank of  
26 America Investments Accounts Nos. L56-070602 and L56-070610 to the Emil Trust.

27 IT IS HEREBY FURTHER ORDERED that, upon receipt by the Emil Frei Trust of the assets set  
28 forth herein from New York Life Insurance and Bank of America Investments pursuant to the terms of the

1 Settlement Agreement, counsel for Stephen Brock and counsel for Emil Frei, III, shall jointly submit an  
2 instruction letter to Snell Wilmer, LLP of the amount necessary, if any, to be transferred to the Emil Frei  
3 Trust pursuant to the terms of the Settlement Agreement from the amounts currently held in its trust account  
4 on behalf of Emil Frei, III and/or Adoria Frei, with the balance of said trust account being transferred to the  
5 Adoria Frei Trust.

6 IT IS HEREBY FURTHER ORDERED that the Petition to Compel Accounting filed by Emil Frei,  
7 III shall be dismissed and any hearing on the same shall be vacated.

8 IT IS HEREBY FURTHER ORDERED that all claims asserted by the parties in the proceedings  
9 involving the Adoria Frei Trust shall be dismissed with prejudice.

10 IT IS HEREBY FURTHER ORDERED that Fredrick Waid, Esq. shall be released and discharged  
11 of his duties as Guardian Ad Litem for Emil Frei, III and any fees incurred by or on behalf of Fredrick Waid,  
12 Esq., as Guardian Ad Litem for Emil Frei, III shall be paid by Emil Frei, III.

13 DATED this 17<sup>th</sup> day of June, 2010.

14  
15  
16   
DISTRICT COURT JUDGE  
17

18 Submitted By:

19 SOLOMON DWIGGINS FREER & MORSE, LTD.

20 By: 

21 Dana A. Dwiggins, Esq.  
22 Cheyenne West Professional Centre  
23 9060 W. Cheyenne Avenue  
24 Las Vegas, Nevada 89129

25 Attorney for STEPHEN BROCK, Trustee of the  
26 Adoria S. Frei Trust - 1999

Approved By:

BLUT & CAMPAIN, APC

By: \_\_\_\_\_

Elliot S. Blut, Esq.  
300 S. Fourth Street, Suite 701  
Las Vegas, Nevada 89101

Attorney for EMIL FREI, III

1 Settlement Agreement, counsel for Stephen Brock and counsel for Emil Frei, III, shall jointly submit an  
2 instruction letter to Snell Wilmer, LLP of the amount necessary, if any, to be transferred to the Emil Frei  
3 Trust pursuant to the terms of the Settlement Agreement from the amounts currently held in its trust account  
4 on behalf of Emil Frei, III and/or Adoria Frei, with the balance of said trust account being transferred to the  
5 Adoria Frei Trust.

6 IT IS HEREBY FURTHER ORDERED that the Petition to Compel Accounting filed by Emil Frei,  
7 III shall be dismissed and any hearing on the same shall be vacated.

8 IT IS HEREBY FURTHER ORDERED that all claims asserted by the parties in the proceedings  
9 involving the Adoria Frei Trust shall be dismissed with prejudice.

10 IT IS HEREBY FURTHER ORDERED that Fredrick Waid, Esq. shall be released and discharged  
11 of his duties as Guardian Ad Litem for Emil Frei, III and any fees incurred by or on behalf of Fredrick Waid,  
12 Esq., as Guardian Ad Litem for Emil Frei, III shall be paid by Emil Frei, III.


13 \_\_\_\_\_ DATED this \_\_\_\_\_ day of June, 2010.  
14  
15

16 DISTRICT COURT JUDGE

17 Submitted By:  
18 SOLOMON DWIGGINS FREER & MORSE, LTD.  
19

Approved By:  
BLUT & CAMPAIN, APC

20 By: \_\_\_\_\_  
21 Dana A. Dwiggins, Esq.  
22 Cheyenne West Professional Centre'  
23 9060 W. Cheyenne Avenue  
24 Las Vegas, Nevada 89129  
Attorney for STEPHEN BROCK, Trustee of the  
Adoria S. Frei Trust - 1999

By:  \_\_\_\_\_  
Elliot S. Blut, Esq.  
300 S. Fourth Street, Suite 701  
Las Vegas, Nevada 89101  
Attorney for EMIL FREI, III

## **Exhibit 1**

**ORIGINAL**

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

*Steven D. Blum*

CLERK OF THE COURT

EMIL FREI, III

Plaintiff

vs.

PUBLIC COMPANY MANAGEMENT  
CORP., et al.

Defendant

CASE NO. A-588750

DEPT. NO. I

Transcript of  
Proceedings

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT COURT JUDGE

PORTION OF JURY TRIAL - DAY 3  
(PLACING OF SETTLEMENT ON THE RECORD)

WEDNESDAY, MARCH 31, 2010

APPEARANCES:

FOR THE PLAINTIFF:

ELLIOT S. BLUT, ESQ.

FOR THE DEFENDANTS:

WILLIAM R. URGAS, ESQ.  
DANA A. DWIGGINS, ESQ.

ALSO PRESENT:

DR. EMIL FREI, III  
MS. MARY FREI

COURT RECORDER:

TRANSCRIPTION BY:

BEVERLY SIGURNIK  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

FILED  
APR 2 2010  
CLERK OF DISTRICT COURT

COPY

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

EMIL FREI, III

Plaintiff

vs.

PUBLIC COMPANY MANAGEMENT  
CORP., et al.

Defendant

CASE NO. A-588750

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ALSO PRESENT:

DR. EMIL FREI, III  
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COURT RECORDER:

TRANSCRIPTION BY:

BEVERLY SIGURNIK  
District Court

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 31, 2010, 2:20 P.M.

2 (Prior proceedings not transcribed)

3 (Jury is not present)

4 THE COURT: All right. We are on the record. My  
5 understanding is there is a settlement in this case.

6 MR. BLUT: That's correct, Your Honor.

7 MR. URGAS: That is true, Your Honor. In fact, it's  
8 going to be a global settlement that will relate to a case  
9 that's pending in the Probate Court and also other litigation  
10 that's pending in other courtrooms in the District Court here  
11 between the parties. And I'm going to request that Dana  
12 Dwiggins present the settlement offer, because she has spent  
13 the lion's share of the time negotiating with Mr. Blut and has  
14 the details.

15 THE COURT: All right. Ms. Dwiggins.

16 MS. DWIGGINS: I'm going to just review it,  
17 primarily.

18 The Emil Frei, III, Trust as amended will receive  
19 assets in the total amount of 400,000, consisting of certain  
20 Bank of America investment accounts, less the PCMC stock which  
21 is held in those accounts. The PCMC stock shall be assigned  
22 to the Adoria S. Frei Trust. She'll also --

23 The Emil Frei, III, Trust shall also receive the  
24 surrender value of a New York Life Insurance Policy Number  
25 43926238 that has a current death benefit of 180,000 and a



1 cash value of approximately 140,000. And to the extent the  
2 foregoing amounts are less than 400,000, the difference in  
3 such amounts shall be paid from the funds currently held in  
4 trust with Attorney Pat Byrne in his trust account.

5 Any remaining funds in that trust account shall be  
6 paid over to the Adoria S. Frei Trust, and Dr. Frei shall  
7 cooperate, if necessary, in surrendering the New York Life  
8 Insurance policy that's referenced.

9 I guess I can't say subject to paragraph 4, can I?  
10 Well, let me start -- that was paragraph 1.

11 Paragraph 2, subject to paragraph 4, Stephen Brock  
12 individually will pay a total sum in the amount of \$175,000 to  
13 the Emil Frei, III, Trust as amendment [sic]. Said amount  
14 shall be treated as repayment of any loan made by the Adoria  
15 S. Frei Trust to Stephen Brock.

16 Paragraph 3, subject also to paragraph 4, Stephen  
17 Brock individually will pay a total sum of \$150,000 to the  
18 Emil Frei, III, Trust, as amended, and Stephen Brock  
19 individually and/or the Adoria S. Frei Trust will pay an  
20 additional total sum of \$90,000 to the Emil Frei, III, Trust  
21 as amended, for a total of \$240,000.

22 Paragraph 4, the amounts set forth above, namely  
23 being the 170,000 [sic], the 150,000, and the 90,000, shall be  
24 paid with interest commencing on June 1st, 2010, at the rate  
25 of prime interest plus 1, payable over the course of three

1 years at 5,000 per month, with the outstanding balance paid on  
2 May 31st, 2013, unless otherwise paid sooner. This amount  
3 shall be secured by Stephen Brock's interest in the joint life  
4 insurance policy, which shall not be disclaimed by Stephen  
5 Brock. In the event the policy is sold, then any amounts  
6 received by Stephen Brock pursuant to his interest in the  
7 joint life insurance trust shall at Stephen Brock's option  
8 either be applied to principal or, in the event not applied to  
9 principal, Stephen Brock shall substitute the security with  
10 some other adequate security.

11 Stephen Brock further represents that he has not  
12 previously assigned or otherwise disclaimed his interest in  
13 the joint life insurance trust.

14 In the event there is a default in any of the  
15 payments there shall be a default interest rate of 5 percent.

16 Paragraph Number 5, Stephen Brock individually will  
17 pay an additional sum in the amount of \$100,000 to the Emil  
18 Frei, III, Trust as amendment [sic], said amount, which shall  
19 be repaid with interest at the rate of 6 percent, payable over  
20 the course of one year at 5,000 per month, with the first  
21 payment and interest commencing on June 1st, 2013, and the  
22 outstanding balance paid on May 31st, 2014, unless otherwise  
23 paid sooner.

24 Paragraph 6, Stephen Brock additionally -- or,  
25 excuse me. Stephen Brock individually will pay an additional

1 sum in the amount of \$100,000 to the Emil Frei, III, Trust as  
2 amendment, which amount shall be repaid with interest at the  
3 rate of 6 percent, payable over the course of one year at  
4 5,000 per month, with the first payment and interest  
5 commencing on June 1st, 2014, and the outstanding balance paid  
6 on May 31st, 2015, unless otherwise paid sooner.

7 Paragraph 7, all real property held in the name of  
8 Emil Frei, III, Adoria Frei, and/or the Adoria Frei Trust,  
9 including, but not limited to, certain real property located  
10 at 5780 El Camino Road, Las Vegas, Nevada; real property  
11 located at 10802 Kennelworth Avenue, Garrett Park, including  
12 the home and the lot; and certain real property located at 401  
13 Grossner Place, Rockville, shall remain in the Adoria S. Frei  
14 Trust. The Adoria S. Frei Trust shall make reasonable efforts  
15 to refinance such properties so as to remove Dr. Frei's name  
16 from any loans thereon, if any.

17 In the event there is a foreclosure on the El Camino  
18 property located here in Las Vegas that results in a  
19 deficiency judgment against Dr. Frei individually, said amount  
20 shall be paid from Stephen Brock's interest in the joint life  
21 insurance trust, which shall not be disclaimed by Stephen  
22 Brock.

23 Paragraph 8, Dr. Frei shall be responsible for any  
24 and all fees and costs incurred by Fred Wade as guardian ad  
25 litem for Dr. Frei, including, but not limited to, fees

1 incurred by Hutchison & Steffen on his behalf.

2 Paragraph 9, the outstanding 2008 tax liability  
3 relating to the 1040 filed on behalf of Dr. Frei and Adoria  
4 Frei shall be equally split between Dr. Frei and the Adoria S.  
5 Frei Trust, provided, however, that the Adoria S. Frei Trust  
6 shall be entitled to make payments on such tax liability.

7 Paragraph 10, certain lawsuit relating to Deer Creek  
8 real property shall be assigned by Dr. Frei to Stephen Brock  
9 individually.

10 Paragraph Number 11, neither Dr. Frei; Elizabeth  
11 Frei; Emil Frei, IV; Judith Frei; Lawrence Howe; Nancy Frei;  
12 and/or Alice Frei shall directly or indirectly disparage  
13 Stephen Brock, Public Company Management Corporation, Go  
14 Public Today, or any of their affiliates or subsidiaries, and  
15 shall not file or make any complaint or cause to be filed or  
16 make any complaint by any third party with the Security  
17 Exchange Commission or any other governmental agency, state or  
18 federal, relating to Public Company Management Corporation, Go  
19 Public Today, or any of their affiliates or subsidiaries. Dr.  
20 Frei; Elizabeth Frei; Emil Frei, IV; Judith Frei; Lawrence  
21 Howe; Nancy Frei; and/or Alice Frei additionally represent  
22 that -- that any complaints or inquiries previously made by  
23 either of them, either directly or indirectly, to any  
24 governmental agency, state or federal, will be withdrawn, and  
25 no further complaints or inquiries will be made. And to the

1 extent any costs are incurred by Stephen Brock, Public Company  
2 Management Corporation, Go Public Today, or any of their  
3 affiliates or subsidiaries as a result of any complaint or  
4 inquiry made to any governmental agency, state or federal,  
5 then such costs shall be deducted from the amount owed -- or  
6 paid by Stephen Brock pursuant to this agreement.

7 MR. BLUT: And that's costs and things that are  
8 incurred after this settlement has been entered, and does not  
9 apply to costs that have previously been assessed.

10 THE COURT: Previously -- previously assessed costs,  
11 then, are not included in that paragraph?

12 MS. DWIGGINS: Correct.

13 THE COURT: Okay.

14 MS. DWIGGINS: Stephen Brock, Public Company  
15 Management Corporation, Go Public Today, or any of their  
16 affiliates or subsidiaries agree not to use Dr. Frei's name in  
17 any manner.

18 Paragraph 12, except as to the terms set forth  
19 herein, Stephen Brock individually, as the prior attorney in  
20 fact for Emil Frei, III, and Adoria S. Frei, as well as  
21 trustee of the Adoria S. Frei Trust, and the Adoria S. Frei  
22 Trust shall be granted a full release relating to any matter  
23 concerning the Adoria S. Frei Trust; the Emil Frei, III,  
24 Trust; Adoria S. Frei; or Emil Frei individually. Said  
25 general release shall be granted by Dr. Frei; Elizabeth Frei;

1 Emil Frei, IV; Judith Frei; Lawrence Howe; Nancy Frei; and/or  
2 Alice Frei; and any and all other heirs.

3 Paragraph 13, Emil Frei, III, shall waive any and  
4 all interest in the Adoria S. Frei Trust, including any right  
5 to receive an accounting of such trust, and shall no longer be  
6 considered a beneficiary of the trust entitled to receive any  
7 information.

8 Paragraph 14, the interest and collateral payments  
9 on the joint life insurance policy on the life of Dr. Frei  
10 with a death benefit of approximately \$8 million shall be paid  
11 equally by Dr. Frei and/or any of his children on the one  
12 hand, and any of Adoria S. Frei's children and/or the Adoria  
13 S. Frei Trust on the other hand. It is represented that the  
14 current interest and collateral payments are approximately  
15 \$30,000 per year.

16 In the event premiums are due on such policy, the  
17 parties shall cooperate with one another in making such  
18 payments, and the trustee shall be authorized to make  
19 reasonable efforts to obtain premium financing and/or other  
20 financing in order to make such premium payments.

21 In the event any payments due under the policy are  
22 made disproportionate by any beneficiary, then said  
23 beneficiary shall be entitled to reimbursement of said amount  
24 from the gross proceeds of the life insurance policy.

25 Dr. Frei and/or his children shall be responsible

1 for the premium and/or interest and collateral payments on the  
2 single life insurance policy.

3 Paragraph 15, all proceedings currently pending  
4 before the Probate Court relating to the Adoria S. Frei Trust,  
5 Case Number P-065235, shall be dismissed with prejudice,  
6 including the petition relating to any accounting.

7 Paragraph 16, any and all actions initiated by and  
8 against Stephen Brock, Public Company Management Corporation,  
9 the Adoria S. Frei Trust, Dr. Frei, and/or his children shall  
10 be dismissed with prejudice, including any counterclaims  
11 asserted therein, and all parties thereto shall be granted a  
12 general release.

13 And I guess paragraph 17, Stephen Brock shall waive  
14 any and all interest in Emil Frei, III, Trust.

15 Did I get them all?

16 MR. BLUT: I think paragraph 18 would be that  
17 there'll be no use by Mr. Brock or Public Company Management  
18 Company or NEDAB or any related affiliated companies of Dr.  
19 Frei's name or likeness, that --

20 MS. DWIGGINS: I included that already, but --

21 MR. BLUT: The next paragraph in line, that --  
22 similar to paragraph 12, that it's basically a mutual general  
23 release of all claims, not just from the Frei side or the  
24 Brock side, but also Mr. Brock and his company, and related  
25 companies are also granting a general release to Dr. Frei;

1 Lawrence Howe; Emil Frei, IV; Mary Frei; Judy Frei; Alice  
2 Frei; and Nancy Frei.

3 Also specifically as to Paragraph Number 1, there  
4 has been a representation and warranty of the cash on hand in  
5 the Adoria Frei Trust, including the representation was  
6 approximately -- and I stress approximately -- 200,000 in the  
7 Bank of America account such that there would be a requirement  
8 of approximately 60,000 from the Pat Byrne account, and that's  
9 a specific representation that's being made to induce Dr. Frei  
10 to enter the agreement.

11 MS. DWIGGINS: I guess I just want to clarify. With  
12 respect to the Bank of America investment accounts I believe  
13 the last statement indicated there was a balance of  
14 approximately \$190,000, and that would be less the value of  
15 the PCMC stock as indicated on those statements.

16 MR. BLUT: That's --

17 THE COURT: The parties agree that whatever the last  
18 bank statement is on that account is the operable --

19 MR. BLUT: In terms of the representations that are  
20 being made, yes.

21 THE COURT: Okay.

22 MR. BLUT: That's all we're trying to make clear,  
23 Your Honor.

24 THE COURT: All right. Is that agreeable?

25 MR. BLUT: Thank you. Also that Mr. Brock will



1 consent to a petition, and really all parties will consent to  
2 petitions in the Probate Court to the extent necessary to  
3 confirm the agreement and have court order specifically  
4 relating to the joint life insurance trust and the waiver of  
5 -- and the agreement to not disclaim his interest by Mr.  
6 Brock.

7 I just want to make sure that's agreed.

8 MS. DWIGGINS: We agree that a petition will be  
9 filed relative to Stephen Brock's inability to disclaim or  
10 otherwise assign his interest in the trust.

11 MR. BLUT: Okay. And we will --

12 THE COURT: Is that agreeable?

13 MR. BLUT: Yes.

14 THE COURT: Okay.

15 MR. BLUT: There'll be representations in there also  
16 as to what the security that that interest is being given and  
17 what that is being given for. That way the trustees can be  
18 aware of the security interest in that contingent interest in  
19 the life insurance policy trust.

20 MS. DWIGGINS: I believe we could just provide the  
21 trustees a copy of the settlement agreement --

22 MR. BLUT: Okay.

23 MS. DWIGGINS: -- that provides it, what's secured.  
24 I don't believe it's necessary for that to be subject to a  
25 petition of the court.

1 MR. BLUT: Well, I guess it would just be whether  
2 there's an agreement that Mr. Brock would consent, obviously  
3 after review by his counsel, to a petition that would comport  
4 and comply with the terms that are on the record.

5 THE COURT: Am I hearing agreement by both sides on  
6 that point, then?

7 MS. DWIGGINS: I guess I'm not sure I fully  
8 understand. As with respect to the joint life insurance  
9 trust, correct.

10 MR. BLUT: Yes. That was the point.

11 THE COURT: That is the point?

12 MR. BLUT: Yes.

13 THE COURT: So there's agreement as to that point.

14 MS. DWIGGINS: I guess I'm not sure if you needed an  
15 order stating that he's not going to disclaim it, but as --  
16 just as opposed to providing a copy of the settlement  
17 agreement to the trustee. But if it's necessary to obtain an  
18 order, then we agree.

19 THE COURT: Any other additions, Mr. Blut?

20 MR. BLUT: That the -- that there's been a -- and  
21 maybe Ms. Dwiggins can make the -- well, before getting to  
22 that, also that there will be a -- within 60 days that will be  
23 provided, and the trustee of the Adoria Frei Trust will  
24 cooperate with the keys to the storage facilities both here  
25 and in Maryland that contains Dr. Frei's personal property.

1 MS. DWIGGINS: We agree to provide them access to  
2 it, the storage facilities.  
3 THE COURT: Is that agreeable?  
4 (Pause in the proceedings)  
5 MS. DWIGGINS: We'll represent we have not removed  
6 any items from the storage facilities.  
7 THE COURT: Okay.  
8 MS. FREI: Either in Maryland or here?  
9 MS. DWIGGINS: Either Maryland or Las Vegas.  
10 MS. FREI: And the storage facility would contain  
11 the items from his home.  
12 THE COURT: Well, they -- the most they can  
13 represent is they haven't removed anything.  
14 MS. FREI: But can I speak. Would it make sense for  
15 my father to list the specific items that he definitely wants  
16 returned that could have been removed from his home and taken  
17 to one of their homes?  
18 MS. DWIGGINS: We will represent that the items from  
19 the home were packed by a professional moving company and  
20 placed in storage, and nothing was removed by my client.  
21 THE COURT: Okay. So that's the representation.  
22 The only question is whether there is agreement, then. With  
23 that representation, is that satisfactory, then?  
24 MR. BLUT: Can we -- can we get -- there's  
25 apparently an inventory list.

1 MS. DWIGGINS: We will provide a copy of the  
2 inventory list.

3 THE COURT: There you go.

4 MR. BLUT: Okay.

5 THE COURT: So a copy of the inventory list will be  
6 provided, and the representation is made that nothing has been  
7 removed from storage and that professional movers were used to  
8 remove everything from the home and take it to the storage.  
9 Is that agreeable, then, that that satisfies that --

10 MS. FREI: What would be the down side of listing  
11 the few specific items that he definitely wanted returned to  
12 him?

13 THE COURT: Well, there's no down side to it, except  
14 we are here now with a jury sitting out in the hall. So --

15 MS. FREI: Well, I can tell you right now there's an  
16 urn and a mosaic table that he absolutely wants returned.

17 THE COURT: Okay. Do we know anything about an urn  
18 and a mosaic table?

19 MR. BROCK: That's in Maryland, to the best of my  
20 knowledge, and my understanding is it's still there.

21 THE COURT: Have you seen it there?

22 MR. BROCK: I have not been to Maryland to see it.

23 THE COURT: Okay. Is that something that would have  
24 been included in the items taken by the professional movers  
25 from the home to the storage?

1 MR. BROCK: That was a separate move in Maryland  
2 from a condominium.

3 THE COURT: Okay.

4 MR. BROCK: The professional movers were here at El  
5 Camino, so I can't attest to -- my brothers moved everything  
6 out for that rental unit to be rented.

7 THE COURT: Okay. So does that sound right, that it  
8 would have gone from the condominium to storage back there?

9 MS. FREI: It would have, assuming that's where it  
10 went.

11 THE COURT: Okay. Well, then the -- how do you want  
12 to handle it? The representation could be that it's there if  
13 you -- if you know that everything went there.

14 MS. DWIGGINS: We don't know. We did not handle  
15 that move.

16 MR. BROCK: It's been represented. I can call my  
17 brother right now if you're going to represent it, if you'd  
18 like.

19 THE COURT: Well, can we -- would it make sense to  
20 do this? I mean, this is going to have to be boiled down to a  
21 writing. By the time you put it in writing you can confirm  
22 that it's there and put that -- put an affirmative  
23 representation, then, in there that those two items, the urn  
24 and the -- what was the other thing?

25 MS. FREI: Well, the specific ones he wants back are

1 the urn and the mosaic table.

2 THE COURT: Urn and the mosaic table. And then the  
3 general representation that the rest of the items were taken  
4 there, as well; right? So is that agreeable, then, to make  
5 that subject to confirmation so that you can make the specific  
6 representation as to those two items?

7 MS. DWIGGINS: We could contact Peter --

8 Is it Peter Brock?

9 MR. BROCK: Peter.

10 MS. DWIGGINS: -- Peter Brock to see if those items  
11 were placed in storage, yes.

12 THE COURT: Okay. So we have an agreement in  
13 principle. It will be confirmed with an affirmative  
14 representation in writing that these two items are there, and  
15 it's already been represented that all the items in fact were  
16 taken from the condominium and put into the storage there.

17 MS. FREI: Just one other thing. My dad would  
18 really like to go see his stuff tomorrow. Is that possible?

19 MS. DWIGGINS: I would have to talk to my client and  
20 see if -- I mean, if he could contact the storage company --

21 MR. BROCK: I haven't talked to the storage company  
22 in six months. I just have to contact them and --

23 THE COURT: Okay. And --

24 MS. FREI: I know it's a little --

25 MS. DWIGGINS: We'll make reasonable efforts --

1 THE COURT: Who's in charge?  
2 MS. DWIGGINS: -- to make sure.  
3 MR. BROCK: I have the information --  
4 THE COURT: Okay. So all reasonable efforts will be  
5 made to give any permission necessary from the defense so that  
6 that visit could be made. Is that satisfactory?  
7 DR. FREI: Yeah, that's -- that's all right.  
8 THE COURT: Okay.  
9 MR. BLUT: And Ms. Dwiggins had made -- and hope --  
10 I think there's a representation that of the Pacific Life and  
11 Jackson National Life annuity accounts that were liquidated in  
12 2009, there's a representation made that taxes were withheld.  
13 MS. DWIGGINS: There's a representation that --  
14 we'll make the representation that we requested taxes to be  
15 withheld.  
16 THE COURT: There will be a -- the representation is  
17 that there will be a request to withhold taxes? Is that the  
18 way you put it?  
19 MS. DWIGGINS: Correct. At the time of liquidation.  
20 THE COURT: Okay.  
21 MR. BLUT: Well, that would have been in the past,  
22 Your Honor, that there was a request that the annuity  
23 companies withhold taxes.  
24 MS. FREI: But the concern is that Dad doesn't want  
25 to get saddled with taxes on that.



1 MS. DWIGGINS: We would have to review the  
2 documents. The best of our knowledge, the requests -- well, I  
3 can represent that there was a request made to withhold taxes,  
4 and to the best of our knowledge taxes in fact were withheld.

5 THE COURT: Okay. All right.

6 MS. FREI: And if they were not?

7 THE COURT: Well, here's our problem, ma'am. We're  
8 -- the question that I have is do I go forward with the trial,  
9 or do I stop. I stop if I have a deal that's sufficient, even  
10 though it hasn't been boiled down in writing, that there is as  
11 much understanding and agreement on all the fine details as we  
12 can put on it at this point. If there is something that  
13 you're telling me it's a deal breaker if there's not some --  
14 some particular and if they're not in a position to make the  
15 affirmation that it's done in a certain way or, in this case,  
16 that the taxes have been withheld --

17 Are you able -- what's the representation in  
18 relation to that?

19 MS. DWIGGINS: The problem is Mr. Blut just informed  
20 me of this issue as we were walking into court this afternoon,  
21 so I unfortunately don't have the documents accessible to me.  
22 I have been able to confirm through the requests for  
23 liquidation, which were the only documents I was able to  
24 access, that there was in fact a request made for taxes to be  
25 withheld.

1 THE COURT: Okay.

2 MS. DWIGGINS: And to the best of our knowledge,  
3 they in fact were withheld. However, I have not been able to  
4 confirm that one way or another, and therefore cannot  
5 represent it.

6 THE COURT: The request would have been made to  
7 whom?

8 MS. DWIGGINS: Directly to Jackson National Life.

9 THE COURT: Okay.

10 MS. FREI: Well, let me ask -- go ahead, Dad.

11 DR. FREI: There are many things in there that are  
12 -- such as books, paintings, et cetera, that --

13 THE COURT: In the storage?

14 DR. FREI: -- are in the storage unit, in those  
15 three facilities.

16 MR. BLUT: Well, she's going to get you into the one  
17 tomorrow.

18 MS. FREI: She's going to do her best to let us go  
19 look at your stuff tomorrow, Dad. Not the stuff in Maryland,  
20 but the stuff here.

21 THE COURT: So the question is is it agreeable and  
22 is there agreement that -- and that will be confirmed, that  
23 the request was made to the Jackson National Bank [sic] to  
24 withhold taxes?

25 MS. DWIGGINS: Jackson National Life, correct.

1 MR. URG: Life insurance.

2 THE COURT: Jackson National Life Insurance to  
3 withhold taxes. That's an affirmative representation that's  
4 being made as part of this.

5 MS. FREI: And this is all new to me, and if the  
6 taxes aren't withheld, he then really is left with virtually  
7 no cash to live on. So my question to you is what happens if  
8 the taxes weren't withheld? We're only talking about his  
9 getting about \$280,000 in cash.

10 THE COURT: Well, it sounds like we don't really  
11 have a deal, then. If I'm understanding, what you're saying  
12 is you have real questions and you're not -- you're not able  
13 to put a settlement on the record at this point. Is that what  
14 you're telling me?

15 MS. FREI: I --

16 THE COURT: All right. Bring the jury in. We're  
17 going to trial.

18 MR. URG: Unbelievable.

19 MS. FREI: Am I wrong? I mean --

20 MR. BLUT: They made the representation.

21 MS. FREI: I don't know what that means.

22 MR. BLUT: Well, they're saying that they asked for  
23 it.

24 MS. FREI: Well, what if it didn't happen, Elliot?  
25 Then Dad has nothing.

1           MR. BLUT: Well, I know. But then we really don't  
2 -- don't have any settlement.

3           MS. FREI: Well, just -- I don't know what to tell  
4 you.

5           (Court recessed at 2:46 p.m., until 2:53 p.m.)

6           (Jury is present)

7           (Continued testimony of Stephen Brock - not transcribed)

8           (Court recessed at 4:02 p.m., until 4:17 p.m.)

9           (Jury is not present)

10          THE COURT: All right. I understand the parties  
11 think they have it settled. But, folks, we have -- we have  
12 stopped this trial in the middle twice now for hours on end on  
13 a trial that we had a set time frame which we gave to this  
14 jury, and they've been sitting out there cooling their heels,  
15 and the clock is running, and we may or may not get done in  
16 time. I am not willing to hold off any longer. We're going  
17 to try this case or you're going to settle it, but we're not  
18 going to kind of do some of one and some of the other.

19          Now, if you're ready to settle the case and you can  
20 put it on the record quickly, let's do it. Otherwise, we'll  
21 bring the jury in, we'll try through the end of the day, and  
22 then we'll see whether we can put it on the record.

23          MR. URGAS: Your Honor, the one issue that was  
24 outstanding is whether the taxes were withheld on the  
25 liquidation of the Jackson Life and the Pacific Life insurance

1 for 2009, and we have confirmed that the taxes were withheld.

2 THE COURT: All right. Is that agreeable?

3 MR. BLUT: It's agreeable with that representation,  
4 Your Honor. That was the last piece.

5 THE COURT: All right. And is that the end of the  
6 -- of putting it -- spreading the settlement on the record?

7 MR. BLUT: Yes. As long -- I'm sure we can piece  
8 together, Your Honor, what we've put on before and now. That  
9 was the last piece.

10 THE COURT: All right. Now, what the parties need  
11 to understand, though, is that if we're going to stop this  
12 trial -- I take it what you're saying is this case is settled  
13 and you want to stop the trial.

14 MR. URGAS: This case is settled, Your Honor.

15 THE COURT: If we're going to stop this trial, it  
16 needs to be that everyone understands that even though we are  
17 going to wait and you're going to boil it down into writing  
18 signed by the parties, which is the proper way to do it.  
19 There has been spread on this record understanding as to what  
20 the settlement is. My position has always been that when that  
21 happens that becomes a binding settlement agreement now. I  
22 understand that there may be problems crop up because you  
23 can't give it all the fine touches and there are things that  
24 will have to be said. But my position is that this is a  
25 binding settlement agreement as of now and that if a party

1 desires to seek enforcement of that settlement agreement,  
2 they're free to do so just based on the record that's here  
3 today.

4 Now, it will be a binding settlement agreement if  
5 the individuals involved indicate on the record that that is  
6 their understanding and that they wish to settle the case on  
7 those terms.

8 I will ask you, Mr. Brock, is that your  
9 understanding and do you wish to settle the case on those  
10 terms?

11 MR. BROCK: Yes, it is, Your Honor. And I do.

12 THE COURT: All right. Mr. Frei, is that your  
13 understanding of the settlement terms and is it your desire to  
14 settle this case on those terms that have been spread upon the  
15 record?

16 DR. FREI: Yes.

17 THE COURT: All right. And the attorneys know this,  
18 but the rest of the folks don't. We not only have somebody  
19 back here making notes, but our record is -- there are video  
20 cameras all around here, and that constitutes the record of  
21 not only the trial, but now of the settlement agreement. It  
22 appears to me that there has been a settlement here, and,  
23 accordingly, we will end this trial.

24 I congratulate the parties. I hope that my firming  
25 up here is not misconstrued. We have an important matter of a

1 jury trial here with jurors sitting around. And we're free to  
2 settle it at any point that you want to, but we're not going  
3 to spend multiple times talking about it and not doing it and  
4 then think that we're going to finish a trial on time.

5 MR. URGAL: Your Honor, I think we still would have  
6 finished the trial on time; but thank goodness we were able to  
7 get it settled.

8 THE COURT: I put that in the same category as  
9 attorneys that tell me that they'll be brief. I've seen it  
10 breached more often than I've seen it adhered to.

11 MR. URGAL: That's my best understanding today.  
12 How's that?

13 THE COURT: Are the parties agreeable, then, for me  
14 to bring the jury in --

15 MR. URGAL: Absolutely.

16 THE COURT: -- and announce to them that the  
17 matter's been settled?

18 MR. URGAL: Absolutely.

19 MR. BLUM: Yes, Your Honor.

20 THE COURT: All right. Let's bring the jury.

21 (Jury reconvened at 4:22 p.m.)

22 (Jury thanked and discharged and  
23 proceedings concluded at 4:26 p.m.)

24

25

\* \* \* \* \*



CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT  
Las Vegas, Nevada 89146

*Florence M. Hoyt*

FLORENCE HOYT, TRANSCRIBER

4/3/10

DATE

# **EXHIBIT “B”**

Lawrence Howe, as trustee  
839 Columbian Ave.  
Oak Park, IL 60302

Elizabeth Frei, as trustee  
63 Park Ave.  
Bedford Hills, NY 10057

September 8, 2014

Mark Dreschler  
President/CEO  
Premier Trust  
4465 S. Jones Blvd.  
Las Vegas NV 89103

Re: Distribution from the Frei Irrevocable [Life Insurance] Trust dated  
October 29, 1996 to the Emil Frei, III Trust--1999

Dear Mr. Dreschler:

As trustees of the Emil Frei, III Trust-----1999, as amended (the "Emil Frei Trust"), we hereby demand that Premier Trust, as trustee of the Frei Irrevocable Life Insurance Trust dated October 29, 1996 ("ILIT"), immediately distribute the sum of \$432,662.34 to the Emil Frei Trust. This demand is made pursuant to that certain settlement agreement approved by order of the District Court of Clark County, Nevada in "In the Matter of Adoria S. Frei Trust -- 1999, Case No. P-09-065235-E" ("Settlement Agreement"). This demand represents amounts otherwise payable to Stephen Brock that, pursuant to the Settlement Agreement, are to be paid to the Emil Frei Trust, including penalties and interest for previous delinquencies in payment.

The amount of the distribution represents the principal, penalties and interest payable under the Settlement Agreement. The Emil Frei Trust reserves it right to demand the payment of additional penalties and interest if payment of the said amount is not made immediately.

Sincerely,

*Elizabeth Mary Frei*

As trustees

c: Angelika Kuehn, Esq.

# **EXHIBIT “A”**

ORIGINAL

FILED

JUN 12 11 22 AM '09

*Ed [Signature]*  
CLERK OF THE COURT

**ORDR**

DANIEL V. GOODSSELL, ESQ.

Nevada Bar No: 7356

MICHAEL A. OLSEN, ESQ.

Nevada Bar No: 6076

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Attorneys for Petitioner

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of

) Case No: P -09-065257

) Dept. No: PCI

)

FREI JOINT IRREVOCABLE TRUST

)

DATED OCTOBER 29, 1996

)

) Hearing Date: 05/01/09

) Hearing Time: 9:30 A.M.

)

**ORDER**

The Court having reviewed the Probate Commissioner's Report and Recommendation Regarding Petition For Order Reforming Terms of Trust entered May 20, 2009 prepared by the Probate Commissioner and attached hereto, and good cause appearing therefore, it is hereby ordered as follows:

☒

The parties having waived the right to object thereto.

☐

No timely objections having been filed thereto.

☐

Having received the objections having been filed thereto and the written

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arguments in support of said objections, and good cause appearing,

IT IS HEREBY ORDERED the Commissioner's Report and Recommendations  
are affirmed and adopted.

IT IS HEREBY ORDERED the Commissioner's Report and Recommendations  
are affirmed and adopted as modified in the manner as set forth in the attachment  
hereto.

IT IS HEREBY ORDERED that a hearing on the Commissioner's Report is set  
for the \_\_\_\_ day of \_\_\_\_\_, 2009.

DATED this 10<sup>th</sup> day of June, 2009.

*[Signature]*  
DISTRICT COURT JUDGE

I hereby certify that on the date filed, copies of this order were served by placing copies in the  
attorney's folders or mailing to parties in proper person at the following address(es):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Court Clerk

Submitted by:

GOODSELL & OLSEN

*[Signature]*

DANIEL V. GOODSELL, ESQ.

Nevada Bar No: 7356

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Nevada Bar No. 11210

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Attorneys for Petitioner

**FILED**

MAY 20 11 40 AM '09

*[Signature]*  
CLERK OF DISTRICT COURT

**RAR**  
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Attorneys for Petitioner

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of	)	Case No: P -09-065257
	)	Dept. No: PCI
	)	
FREI JOINT IRREVOCABLE TRUST	)	
DATED OCTOBER 29, 1996	)	
	)	Hearing Date: 05/01/09
	)	Hearing Time: 9:30 A.M.
	)	

**PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION  
REGARDING PETITION FOR ORDER REFORMING TERMS OF TRUST**

STEPHEN M. BROCK's Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29, 1996, for an Order Assuming Jurisdiction Over the Trust, and for an Order Reforming the Terms of the Trust having come on regularly for hearing before the Probate Commissioner of the Eighth Judicial District Court of Clark County, State of Nevada, and the Probate Commissioner having reviewed the pleadings and papers on file herein, and having heard the arguments of legal counsel representing the parties, and the Probate Commissioner

1 acting as a special master herein as provided under NRCP 53, hereby makes the following  
2 findings and recommendations:

3  
4 **I. PARTIES REPRESENTED AND PLEADINGS FILED**

5 The Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29,  
6 1996, for an Order Assuming Jurisdiction Over the Trust, and for an Order Reforming the Terms  
7 of the Trust filed by STEPEHN M. BROCK (hereafter referred to as the "Petitioner"), the  
8 Opposition to Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29,  
9 1996, for an Order Assuming Jurisdiction Over the Trust, and for an Order Reforming the Terms  
10 of the Trust filed by EMIL FREI, III (hereinafter referred to as "Dr. Frei"); and Reply to  
11 Opposition to Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29,  
12 1996, for an Order Assuming Jurisdiction Over the Trust and for an Order Reforming the Terms  
13 of the Trust filed by Petitioner; came on regularly before the Probate Commissioner on May 1,  
14 2009 at 9:30 p.m., wherein Daniel V. Goodsell, Esq. and Michael A. Olsen, Esq. of the law firm  
15 GOODSELL & OLSEN appeared and on behalf of the Petitioner; and Elliot S. Blut, Esq. of the  
16 law firm BLUT & CAMPAIN appeared on behalf of Dr. Frei.

17  
18  
19 **II. FINDINGS OF FACT**

20 The Probate Commissioner, after reviewing all pleadings and after hearing oral  
21 arguments by counsel in this matter, being fully advised in the premises, and good cause  
22 appearing, hereby finds as follows:

23  
24 1. That Dr. Frei and ADORIA S. FREI ("Mrs. Frei") were the Trustors of the  
25 Frei Joint Revocable Trust dated October 29, 1996 (the "Trust").

26 2. That ADORIA S. FREI died on January 28, 2009, thus leaving Dr. Frei as  
27 the sole surviving Trustor of the Trust.  
28





1                   **IT IS FURTHER RECOMMENDED** that EMIL FREI, IV and PETER  
2 AUGUSTINE BROCK should be confirmed as the co-trustees of the Trust.

3                   **IT IS FURTHER RECOMMENDED** that this Court should assume jurisdiction  
4 over the Trust as a proceeding *in rem* as provided under NRS 164.010.  
5

6                   **IT IS FURTHER RECOMMENDED** that the Petition to Confirm Trustees of  
7 the Frei Joint Irrevocable Trust dated October 29, 1996, for an Order Assuming Jurisdiction Over  
8 the Trust, and for an Order Reforming the Terms of the Trust should be GRANTED and Section  
9 I of Article Seven of the Trust should be restated in its entirety as follows:  
10

11                                   **Article Seven**

12   **Distribution of Our Trust Property**

13                   **Section 1. Distribution of Trust Shares for Each Child**

14                   The Exempt Share and the Non-Exempt Share of each child of ours who shall  
15 then be living shall be administered and distributed as follows:

16                   **a. Distribution of Both Exempt Share and Non-Exempt Share Upon Election of**  
17 **Child**

18                   Upon an election in writing by any child of ours delivered to our Trustee, the trust  
19 share set aside for such child shall forthwith terminate and our Trustee shall distribute  
20 all undistributed net income and principal to such child outright and free of the trust.  
21 In the absence of such an election, the trust share set aside for such child shall be  
22 administered and distributed as provided in subparagraphs b. and c. below of this  
23 Section I.

24                   **b. Distribution of Exempt Share**

25                   The undistributed Exempt Share for any child of ours shall be held in trust and  
26 administered and distributed as follows:

27                                   **1. Distributions of Net Income of the Exempt Share**

28                   Our Trustee, in its sole and absolute discretion, shall apply to, or for the benefit  
of, a child or ours as much of the net income from such child's Exempt Share as  
our Trustee deems advisable for the education, health, maintenance, and support  
of the child.

1                   **2. Distributions of Principal of the Exempt Share**

2                   Our Trustee, in its sole and absolute discretion, shall apply to, or for the benefit  
3                   of, any child of ours as much of the principal from such child's Exempt Share as  
4                   our Trustee deems advisable for the education, health, maintenance, and support  
5                   of the child.

6                   **3. Guidelines for Discretionary Distributions from the Exempt Share**

7                   To the extent that we have given our Trustee any discretionary authority over the  
8                   distribution of income or principal from the Exempt Share to any child or ours, it  
9                   is our desire that our Trustee be liberal in exercising such discretion.

10                  In making discretionary distributions to such child, our Trustee shall be mindful  
11                  of, and take into consideration to the extent it deems necessary, any additional  
12                  sources of income and principal available to the child which arise outside of this  
13                  agreement and are known to our Trustee, and also the income and principal  
14                  available to the child from the child's Non-Exempt Share.

15                  It is our express desire that our Trustee take into consideration the future probable  
16                  needs of the child prior to making any discretionary distributions  
17                  hereunder.

18                  **4. Distribution of the Exempt Share on the Death of the Child**

19                  Upon the death of any child of ours, any property in such child's Exempt Share  
20                  shall be distributed to or for the benefit of the descendants of the child as the child  
21                  shall appoint either by a valid last will and testament or by a valid living trust  
22                  agreement. Such child may make distributions among such child's descendants in  
23                  equal or unequal amounts, and on such terms and conditions, either outright or in  
24                  trust, as the child shall determine. This limited testamentary power shall not be  
25                  exercised in favor of the child's estate or the creditors of the child's estate.

26                  To the extent that such child shall fail to exercise this limited testamentary power  
27                  of appointment, any property in such child's Exempt Share shall be divided and  
28                  allocated to the child's then living descendants, *per stirpes*, to be held and  
                     administered in a separate Exempt Shares for each of such descendant in  
                     accordance with subsection 5 below.

                     If such deceased child has no then living descendants, any property in such child's  
                     Exempt Share shall be divided and allocated to our then living descendants, *per*  
                     *stirpes*, to be added to the Exempt Shares being held and administered for each of  
                     such descendants or, if no Exempt Share is being held for a descendant, to be held  
                     for that descendant in an Exempt Share in accordance with subsection 5 below. If  
                     we have no then living descendants, our Trustee shall distribute such trust  
                     property as provided in Article Eight of this agreement.

## 5. Distribution of Exempt Shares for Descendants

Any Exempt Shares established pursuant to subsection 4 above or pursuant to this subsection 5 shall be held and administered upon the same terms and provisions set forth in this Section 1 that governed the Exempt Share for the child during the child's lifetime.

Upon the death of any beneficiary for whom an Exempt Share shall have been established pursuant to subsection 4 or this subsection 5, any property in such beneficiary's Exempt Share shall be distributed to or for the benefit of the descendants of such beneficiary as such beneficiary shall appoint either by a valid last will and testament or by a valid living trust agreement. Such beneficiary may make distributions among his or her descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as such beneficiary shall determine. This limited testamentary power shall not be exercised in favor of the estate or the creditors of the estate of such beneficiary.

To the extent that any such beneficiary shall fail to exercise this limited testamentary power of appointment, any property in the Exempt Share of such beneficiary shall be divided and allocated to such beneficiary's then living descendants; *per stirpes*, to be held and administered in separate Exempt Shares for each of such descendants.

Upon the death of the descendants of such beneficiary for whom Exempt Shares shall have been established, and upon the death of their descendants for whom Exempt Shares shall have been established, generation to generation, until the expiration of the period described in Section 2 of Article Thirteen of this agreement, Exempt Shares shall be established for the descendants of a deceased beneficiary, *per stirpes*, and held and administered pursuant to the provisions of this subsection 5. Upon the expiration of the period described in Section 2 of Article Thirteen, such shares shall be distributed as therein provided

If any beneficiary of an Exempt Share established pursuant to subsection 4 or this subsection 5 has no descendants living at his or her death, any property in the Exempt Share of such beneficiary shall be divided and allocated to the then living descendants of the marriage of the parents of such beneficiary, *per stirpes*, and, if there are no then living descendants of the marriage of the parents of such beneficiary, to the then living descendants of the deceased child of ours, *per stirpes*, and if there are no then living descendants of such deceased child, to our then living descendants, *per stirpes*, in each case to be added to the Exempt Share being held or administered for each of such descendants or if no Exempt Share is being held for a descendant, to be held for that descendant in an Exempt Share in accordance with this subsection 5.

If we have no then living descendants, our Trustee shall distribute such trust property as provided in Article Eight of this agreement.

1                   c.   **Distribution of the Non-Exempt Share**

2                   The undistributed Non-Exempt Share for a child of ours shall be distributed as  
3                   follows:

4                   **1.   Distribution of the Non-Exempt Share**

5                   The trust share set aside for such child shall forthwith terminate and our Trustee  
6                   shall distribute all undistributed net income and principal to such child free of the  
7                   trust.

8                   **2.   Distribution of the Non-Exempt Share on the Death of the Child**

9                   A deceased child of ours shall have the unlimited and unrestricted testamentary  
10                  general power to appoint, by a valid last will and testament or by a valid living  
11                  trust agreement, any property remaining in her Non-Exempt Share, the  
12                  distribution of which would otherwise constitute a taxable generation-skipping  
13                  transfer. In exercising this testamentary general power of appointment, such child  
14                  shall specifically refer to this power. Such child shall have the sole and exclusive  
15                  right to exercise this testamentary general power of appointment. This  
16                  testamentary general power of appointment specifically grants to such child the  
17                  right to appoint property to such child's own estate. It also specifically grants to  
18                  such child the right to appoint the property among persons, corporations, or other  
19                  entities in equal or unequal proportions, and on such terms and conditions,  
20                  whether outright or in trust, as she may elect. Any property in the Non-Exempt  
21                  Share of such child which is not distributed pursuant to the exercise of this  
22                  testamentary general power of appointment or is not subject to such power  
23                  because it is not taxable as a generation-skipping transfer shall be distributed to  
24                  the then living descendants of such child, *per stirpes*.

20                  //

21                  //

23                  [The remainder of this page was left blank intentionally.]

24                  //

25                  //

26                  //

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If such child has no then living descendants, our Trustee shall distribute the balance of the property of the Non-Exempt Share to our then living descendants, *per stirpes*. If we have no then living descendants, our Trustee shall distribute the remaining trust property as provided in Article Eight of this agreement.

DATED this 14<sup>th</sup> day of May, 2009.

WESLEY F. YAMASHITA

PROBATE COMMISSIONER Se

Submitted by:

GOODSELL & OLSEN

  
DANIEL V. GOODSSELL, ESQ.

Nevada Bar No: 1356

MICHAEL A. OLSEN, ESQ.

Nevada Bar No: 6076

10155 W. Twain Ave., Suite 100

Las Vegas, Nevada 89147

Attorneys for Petitioner



NOTICE

Pursuant to NRCP 53, you are hereby notified you have ten (10) days from the date you are served with the foregoing Report and Recommendation within which you may file a written objection.

I HEREBY CERTIFY that service of the foregoing Report and Recommendation was made this 20<sup>th</sup> day of May, by depositing a true and correct copy of the aforementioned document in the U.S. Mail, postage prepaid, first class mail, addressed to:

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Oak Park, IL 60302-1557

Mary Frei  
63 Park Avenue  
Bedford Hills, NY 10807

Alice Frei  
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Houston, TX 77030

Nancy Frei  
12506 Queensbury  
Houston, TX 77024

Emil Frei IV  
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Andover, MA 01810  
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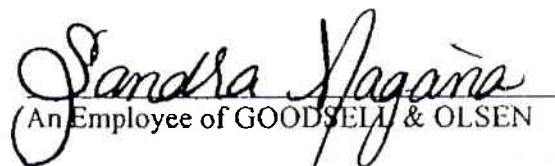
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(An Employee of GOODSELL & OLSEN)



IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF FREI IRREVOCABLE  
TRUST DATED OCTOBER 29, 1986

STEPHEN BROCK,  
Appellant,  
vs.  
PREMIER TRUST, INC.; LAWRENCE  
HOWE; AND ELIZABETH MARY FREI,  
Respondents.

No. 68029

Electronically Filed  
Jun 29 2015 12:44 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 26

County Clark Judge Sturman/Probate Commissioner

District Ct. Case No. P-09-065257-T

**2. Attorney filing this docketing statement:**

Attorney Michael N. Beede Telephone (702) 473-8406

Firm The Law Office of Mike Beede

Address 2300 W. Sahara Ave, Suite 420  
Las Vegas, NV 89102

Client(s) Steven Brock, Appellant

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Richard D. Chatwin/Douglas D. Gerrard Telephone (702) 796-4000

Firm Gerard Cox & Larsen

Address 2450 St. Rose Parkway, Suite 200  
Henderson, NV 89074

Client(s) Premier Trust, Inc.

Attorney Russel J. Geist/Todd L. Moody Telephone (702) 385-2500

Firm Hutchison & Steffen

Address 10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

Client(s) Lawrence Howe and Elizabeth Mary Frei

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

To the best of Appellant's knowledge no proceedings are pending, nor have any prior proceedings been initiated in this court.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Public Co Management Corp v. Emil Frei, IV; A-10-609292-C; Eighth Judicial District Court, Clark County, Nevada; Dismissed with prejudice January 18, 2011.

Emil Frei III v. Stephen Brock; A-10-607772-C; Eighth Judicial District Court, Clark County, Nevada; Dismissed with prejudice January 25, 2011.

In the Matter of the Trust of: Adoria S. Frei Trust-1999 dated September 14, 1999; Eighth Judicial District Court, Clark County, Nevada; First and Final Accounting entered in the docket on January 12, 2015.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The action below sought redress of payments made from Appellant's share of the subject irrevocable trust in violation of the spendthrift provisions of said trust. Respondents advanced the position that an Amendment to the trust allowed the trustee to make said payments. The subject trust had two original settlors, and Appellant contends that any attempt to amend the trust after the death of one of the settlors is void ab initio. The District Court found that because the purported amendment abrogating the terms of the spendthrift provision was based upon agreement of one of the settlors and the affected beneficiary the amendment was valid. The district court Denied Petitioner's Petition to Construe the Terms of the Trust, Confirm Removal of Trustee, Compel Redress of Breach of Fiduciary Duties, and Release Jurisdiction of the Trust, Granted an order ratifying the 2009 reformation and modification of the spendthrift provision, found that petitioner is Judicially Estopped from raising voidness as a defense, and Denied claims that Premier Trust violated its fiduciary duties.

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

At issue on appeal are the following:

The validity of amendments to an irrevocable trust following the death of one of its joint settlors.

Whether the doctrine of Judicial Estoppel can be applied to give effect to a trust amendment which is void ab initio.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant is unaware of any pending proceedings relating to the same or similar issues.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The District Court found that there was no case law on point with the circumstances of this case, where an attempt to abrogate the spendthrift provision of a trust through amendment was attempted between a settlor and the affected beneficiary. Further this appeal raises substantial public policy concerns related to the validity of spendthrift provisions.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** Apr 14, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** Apr 14, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**18. Date notice of appeal filed** May 14, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          | <u></u>                               |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The instant appeal constitutes an appeal of a final judgment denying Petitioner's petition in the District Court, the court in which the action was commenced. As such appeal and review is proper pursuant to NRAP 3A(b)(1).

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Premier Trust, Inc.  
Lawrence Howe  
Elizabeth Mary Frei

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All parties are involved in this appeal.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

No counterclaims, cross-claims, or third-party claims were alleged or pled in the proceedings below.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:



(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Steven Brock  
Name of appellant

Michael N. Beede  
Name of counsel of record

06/02/2015  
Date

  
Signature of counsel of record

State of Nevada, County of Clark  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 9<sup>th</sup> day of June, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Richard D. Chatwin, Douglas D. Gerrard/Gerard Cox & Larsen  
Russel J. Geist, Todd L. Moody/Hutchison & Steffen, LLC  
Ara H. Shirinian

Dated this 9<sup>th</sup> day of June, 2015


  
Signature

## LIST OF ADDRESSES OF SERVICE RECIEPIENTS

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Ara H. Shirinian  
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*Settlement Judge*

  
CLERK OF THE COURT

PET  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the

CASE NO. P-09-065257-T

FREI IRREVOCABLE TRUST, dated  
October 29, 1996.

DEPARTMENT: 26

**PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL COMPLIANCE WITH  
TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE, TO COMPEL REDRESS  
OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE JURISDICTION OF THE  
TRUST**

Stephen Brock ("Petitioner"), by and through his attorneys of record of the law firm Clear Counsel Law Group, hereby petitions the Court to construe the terms of the trust, to compel compliance with the terms of the trust, to confirm the removal of the trustee of the Trust, to compel redress of breaches of fiduciary duties, and to then release jurisdiction of the Trust, as follows:

**Background Facts**

1. By Order of this Court entered in this case on June 12, 2009, this Court assumed jurisdiction of the Frei Irrevocable Trust, dated October 29, 1996 (the "Trust").<sup>1</sup> A copy of the

<sup>1</sup> The Trust was erroneously referred to as the Frei Joint Irrevocable Trust in earlier filings in this matter. The correct name of the Trust is the Frei Irrevocable Trust. See Article One, Section 2 of the Trust.

1 Trust will be submitted in camera for this Court's review. The Court has not released jurisdiction  
2 of the Trust. A copy of the June 12, 2009, Order is attached as Exhibit A.

3 2. Emil Frei, III ("Dr. Frei"), and Adoria B. Frei ("Adoria") created the Trust as the  
4 settlors of the Trust on October 29, 1996. (Dr. Frei and Adoria are collectively referred to as the  
5 "Settlors".) The Settlers designated Emil Frei, IV, and Peter Augustine Brock as the initial  
6 trustees of the Trust. See Art. One, §1 of the Trust. At some point thereafter, the Settlers  
7 transferred to the Trust the Settlers' interest in a joint survivor life insurance policy through  
8 Transamerica Insurance and Investment Group insuring the joint lives of Dr. Frei and Adoria with  
9 a face amount death benefit of \$7,000,000 (the "Transamerica policy").

10 3. The Settlers expressly declared the Trust to be irrevocable and retained no right,  
11 title, or interest in the income or principal of the Trust. See Art. One, §§3-4 of the Trust.

12 4. The Settlers designated their ten children as the beneficiaries of the Trust (five of  
13 the children are Dr. Frei's children, and five of the children are Adoria's children). See Art.  
14 Three, §1 of the Trust.

15 5. Adoria died on January 28, 2009. Dr. Frei died on April 30, 2013.

16 6. Following Dr. Frei's death, the trustees of the Trust obtained the proceeds from the  
17 Transamerica policy with a total death benefit of approximately \$7.5 million.

18 7. Upon information and belief, at some point Emil Frei, IV, resigned or was  
19 removed as trustee of the Trust and was replaced by Premier Trust, Inc., as successor co-trustee.  
20 Upon information and belief, Peter Augustine Brock continues to serve as a co-trustee of the  
21 Trust.

22 8. By way of this Court's June 12, 2009, Order entered in this case, the Court  
23 reformed the terms of the Trust as set forth in the Order. In particular, the Court reformed Article  
24 Seven, Section One of the Trust, which Section provides for the distribution of the Trust upon the

1 death of the surviving Settlor, by reducing the redundant provisions of the original Article Seven,  
2 Section One with a uniform provision that applied to all beneficiaries of the Trust. (The  
3 reformation reduces this Section of the Trust from fifty-one pages of text to approximately four  
4 pages of text.)

5 9. Though the majority of the reformed Article Seven, Section One is essentially  
6 identical in function with the original provision, the purpose of the reformed provision is to add in  
7 a right of the beneficiaries to elect in writing to require the trustees to terminate that beneficiary's  
8 share of the Trust and to then distribute all of the net income and principal of that beneficiary's  
9 share of the Trust outright and free of trust. See reformed Article Seven, §1.a., as set forth in June  
10 12, 2009, Order. If the beneficiary does not provide such a written election, the trustees are to  
11 continue to hold the Trust share for such beneficiary and administer and distribute the Trust share  
12 as set forth in the remaining provisions of Section 1 of Article Seven. Id.

13 10. Upon information and belief, the proceeds from the Transamerica policy were  
14 allocated in full to the Exempt Shares of the Trust. The distribution of the Exempt Shares is  
15 governed by Article Seven, §1.b. of the Trust (as reformed). In particular, for such shares as are  
16 retained in Trust for a beneficiary, the trustees are granted discretion to distribute the net income  
17 and the principal to or for the benefit of the beneficiary for the beneficiary's education, health,  
18 maintenance, and support. See Art. Seven, §1.b.1.-2. of the Trust. The beneficiary of the share is  
19 not granted any right to compel or direct distributions from the share held for such beneficiary.

20 11. Upon information and belief, following Dr. Frei's death all nine of the other  
21 beneficiaries of the Trust, with the exception of Petitioner, elected to receive distribution in full of  
22 their respective shares of the Trust, or the trustees of the Trust have made distribution in full of  
23 the other nine beneficiaries' shares of the Trust. Upon information and belief, the trustees may  
24

1 have retained a small reserve for final administrative expenses and taxes, if any, which amount is  
2 being held in an administrative account and not in separate shares for the other nine beneficiaries.

3 12. Petitioner has not elected to receive distribution in full of his respective share of  
4 the Trust. Thus, Petitioner's share of the Trust remains held in the Trust to be held, administered,  
5 and distributed pursuant to the terms of Article Seven, Section 1 of the Trust (as reformed).

6 13. However, Premier Trust has paid \$300,000 without Petitioner's consent or  
7 knowledge from Petitioner's share of the Trust to purported creditors of Petitioner.

8 14. Upon information and belief, approximately \$450,000 remains held in Petitioner's  
9 share of the Trust.

10 15. Premier Trust is a Nevada entity doing business in Nevada, maintains all of the  
11 assets of the Trust within the State of Nevada, maintains the records of the Trust in Nevada, has  
12 authority to prepare tax returns for the Trust, and is otherwise administering the Trust in Nevada.

13 16. Petitioner is a Nevada resident.

14 **Petition to Construe Terms of the Trust**

15 17. Petitioner petitions the Court pursuant to NRS 153.031(1)(b) and NRS 164.015 to  
16 construe the terms of the Trust. Specifically, Petitioner requests that the Court confirm that the  
17 Trust itself and specifically Petitioner's share of the Trust is a spendthrift trust under NRS 166.

18 18. Nevada law provides for and protects the use of a "spendthrift trust," which is "a  
19 trust in which by the terms thereof a valid restraint on the voluntary or involuntary transfer of the  
20 interest of the beneficiary is imposed." NRS 166.020.

21 19. Nevada law further provides the manner in which a spendthrift trust may be  
22 created, stating, "Any person competent by law to execute a will or deed may, by writing only,  
23 duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or  
24 mixed property for the benefit of: (a) A person other than the settlor ...." NRS 166.040(1).

1 Furthermore, no specific language must be used to create a spendthrift trust, so long as “by the  
2 terms of the writing ... the creator manifests an intention to create such a trust.” NRS 166.050.

3 20. In this situation, the Settlers clearly manifested their intention to create a trust that  
4 imposes a valid restraint on the voluntary or involuntary transfer of Petitioner’s interest in the  
5 Trust. In particular, the Settlers clearly stated,

6 To the fullest extent permitted by law, the interests of all of the beneficiaries in  
7 the various trusts and trust property subject to this agreement shall not be  
8 alienated, pledged, anticipated, assigned, or encumbered unless specifically  
9 authorized by the terms of this agreement.

Such interests shall not be subject to legal process or to the claims of any creditors  
while such interests remain trust property.

10 See Art. Thirteen, §3 of the Trust.

11 21. By this provision, the Settlers made clear that a beneficiary of the Trust (such as  
12 Petitioner) has no power to alienate, pledge, anticipate, assign, or encumber his interest under the  
13 Trust. The Settlers further made it clear that Petitioner’s interest in the Trust cannot be subject to  
14 creditors while Petitioner’s interest remains in the Trust.

15 22. The Settlers further complied with NRS 166.040(1) by creating the Trust in  
16 writing, by conveying personal property to the Trust, and by making the Trust for the benefit of  
17 Petitioner (a person other than the Settlers).

18 23. Petitioner, therefore, petitions the Court to determine the construction of the Trust  
19 and to declare that the Trust is a valid spendthrift trust under Nevada law, and that, more  
20 specifically, Petitioner’s interest in his share of the Trust is held as a spendthrift trust under  
21 Nevada law.



**Petition to Compel Compliance with the Terms of the Trust**

24. Petitioner petitions the Court pursuant to NRS 153.031(1)(q) and NRS 164.015 to compel the trustees of the Trust to comply with the terms of the Trust by defending the spendthrift nature of the Trust against Petitioner's creditors.

25. Nevada law does not allow the trustee of a spendthrift trust any discretion to ignore the spendthrift nature of the trust. "The trustee of a spendthrift trust is **required to disregard and defeat** every assignment or other act, voluntary or involuntary, that is attempted contrary to the provisions of this chapter." NRS 166.120(4) (emphasis added).

26. A spendthrift trust under Nevada law restrains and prohibits generally the assignment, alienation, acceleration and anticipation of any interest of the beneficiary under the trust by the voluntary or involuntary act of the beneficiary, or by operation of law or any process or at all. **The trust estate**, or corpus or capital thereof, **shall never be assigned, aliened, diminished or impaired** by any alienation, transfer or seizure so as to cut off or diminish the payments, or the rents, profits, earnings or income of the trust estate that would otherwise be currently available for the benefit of the beneficiary.

NRS 166.120(1) (emphasis added).

27. Importantly, NRS 166 does not provide any exceptions to the protections provided by spendthrift trusts for any type or class of creditors. In short, there are no "exception creditors" in Nevada.

28. As such, Petitioner seeks an order of this Court in general compelling the trustees of the Trust to "disregard and defeat" any attempted assignment, alienation, acceleration, or anticipation of Petitioner's interest in the Trust and to compel the trustees of the Trust to defend the Trust against any attempts to attach Petitioner's interest under the Trust.

29. In particular, Petitioner seeks a specific order of the Court compelling the trustees of the Trust to "disregard and defeat" a demand made by the trustees of the Emil Frei, III Trust – 1999 (the "Emil Frei Trust") for immediate distribution of over \$432,000 in satisfaction of

1 amounts allegedly due and payable from Petitioner. A copy of a demand letter, dated September  
2 8, 2014, from the trustees of the Emil Frei Trust to Premier Trust is attached as Exhibit B.

3 30. The trustees of the Emil Frei Trust allege that Petitioner is indebted to them for  
4 amounts allegedly due and unpaid pursuant to a Settlement Agreement approved by Order of this  
5 Court entered on June 18, 2010, in case number P-09-065235-E. A copy of the Order Approving  
6 Settlement Agreement is attached as Exhibit C.

7 31. Under the Settlement Agreement and in resolution of highly disputed claims  
8 against Petitioner, Petitioner agreed to pay certain sums of money to the Emil Frei Trust as set  
9 forth in the Settlement Agreement. The Settlement Agreement further provides, "Said amount  
10 shall be secured by Stephen Brock's interest in The Frei Irrevocable Trust, dated October 29,  
11 1996 ..., which shall not be disclaimed by Stephen Brock." See Exh. C, p. 2, l. 27 – p.3, l. 1.

12 32. On the basis of the attempted pledge of Petitioner's interest in the Trust as set forth  
13 in the Settlement Agreement, the trustees of the Emil Frei Trust assert that the trustees of the  
14 Trust are required to distribute money from Petitioner's share of the Trust in satisfaction of  
15 Petitioner's alleged debt to the Emil Frei Trust.

16 33. The Court, however, must compel the trustees of the Trust to "disregard and  
17 defeat" such a demand. As set forth above, the Trust itself states that Petitioner's interest in the  
18 Trust "shall not be alienated, pledged, anticipated, assigned, or encumbered." See Art. Thirteen,  
19 §3 of the Trust. The Trust clearly provides that Petitioner's interest in the Trust "shall not be  
20 subject to legal process or to the claims of any creditors." Id.

21 34. Furthermore, Nevada law clearly prohibits any attempt to assign, alienate, pledge,  
22 or otherwise encumber Petitioner's interest in the Trust whether by "voluntary or involuntary act  
23 of" Petitioner. NRS 166.120(1). Thus, even if Petitioner voluntarily consented to the attempted  
24

1 assignment or pledge of his interest in the Trust as set forth in the Settlement Agreement, such an  
2 assignment or pledge is clearly prohibited and is, therefore, void ab initio.

3 35. In addition, it is of no consequence that the attempted pledge of the interest is  
4 contained in the Order Approving Settlement Agreement. In particular, the language on which the  
5 trustees of the Emil Frei Trust rely does not allow the trustees to invade the principal of the Trust  
6 in order to pay Petitioner's creditors. As noted, the Settlement Agreement provides, "Said amount  
7 shall be secured by Stephen Brock's interest in The Frei Irrevocable Trust, dated October 29,  
8 1996 ..., which shall not be disclaimed by Stephen Brock." See Exh. C, p. 2, l. 27 – p.3, l. 1.

9 36. This question is easily disposed of by understanding the nature of Petitioner's  
10 interest in the Trust. Petitioner's only interest in the Trust is as a beneficiary of the Trust.  
11 Petitioner has no authority to compel distributions from the Trust or to order the trustees of the  
12 Trust to make distribution to him or for his benefit. Petitioner's only interest in the Trust is to the  
13 extent that the trustees of the Trust exercise their discretion and distribute income or principal  
14 directly to Petitioner.

15 37. Thus, the provision of the Settlement Agreement providing that Petitioner's  
16 obligations should be secured by his interest in the Trust should be interpreted either (a) as an  
17 invalid and void attempted assignment or pledge of Petitioner's interest in the Trust, or (b)  
18 confined only to security on those amounts of the Trust distributed directly to Petitioner.

19 38. Petitioner, therefore, petitions the Court to compel the trustees of the Trust to  
20 comply with the terms of the Trust and with Nevada law by disregarding and defeating the  
21 demand made upon the trustees by the Emil Frei Trust and by refusing to pay any amount from  
22 Petitioner's share of the Trust to the Emil Frei Trust.

23 39. Petitioner further petitions the Court to declare that the attempted pledge of  
24 Petitioner's interest in the Trust by way of the Settlement Agreement is void ab initio and that

1 Petitioner does not have and never has had the right or ability under the Trust to assign, alienate,  
2 accelerate, or anticipate his interest under the Trust, including by way of the Settlement  
3 Agreement.

4 **Petition to Confirm Removal of Trustee or, in the Alternative, to Remove Trustee**

5 40. Petitioner petitions the Court pursuant to NRS 153.031(1)(k) and NRS 164.015 to  
6 confirm the removal of Premier Trust, Inc., as trustee of the Trust, or in the alternative, to remove  
7 Premier Trust, Inc., as trustee of the Trust.

8 41. Upon information and belief, Petitioner is the only current income beneficiary of  
9 the Trust and, as such, is entitled to remove a trustee of the Trust for any reason, with or without  
10 cause, by delivery of written notice to the trustee of the removal. See Art. Ten, §2 of the Trust.

11 42. On November 13, 2014, Petitioner caused a Notice of Removal of Trustee to be  
12 hand delivered to Premier Trust. A copy of the Notice of Removal is attached as Exhibit D, and  
13 an Acknowledgment of the delivery is attached as Exhibit E.

14 43. Petitioner asserts that delivery of the Notice of Removal is sufficient to cause the  
15 removal of Premier Trust and that Petitioner need not obtain further confirmation from this Court.  
16 However, upon information and belief, Premier Trust has taken the position that it has not been  
17 removed as trustee of the Trust and that it may continue to act as trustee of the Trust.

18 44. Petitioner, therefore, petitions the Court pursuant to NRS 153.031(1)(k) and NRS  
19 164.015 to confirm that Premier Trust has been removed as trustee of the Trust.

20 45. In the alternative, Petitioner petitions the Court pursuant to NRS 153.031(1)(k) and  
21 NRS 164.015 to remove Premier Trust as trustee of the Trust for its egregious breach of its  
22 fiduciary duty to Petitioner.

23 46. As set forth above, Petitioner's share of the Trust is held as a spendthrift trust.  
24 Despite this fact, Premier Trust has openly violated its fiduciary duties under the Trust and its

1 statutory duty to “disregard and defeat every assignment or other act, voluntary or involuntary,  
2 that is attempted contrary to the provisions of [NRS 166].” NRS 166.120(4).

3 47. In particular, after Dr. Frei’s death and after collecting the proceeds of the  
4 Transamerica policy, Premier Trust paid \$300,000 from Petitioner’s share of the Trust to the  
5 trustees of the Emil Frei Trust without Petitioner’s knowledge or consent! Upon information and  
6 belief, Premier Trust would have continued to pay additional amounts to Petitioner’s purported  
7 creditor but for Petitioner discovering Premier Trust’s blatant breach of trust and inquiring about  
8 Premier Trust’s authority to have made such payments.

9 48. To exacerbate Premier Trust’s violation of its fiduciary duties under the Trust and  
10 its statutory duties as trustee of a spendthrift trust, Premier Trust has threatened to expose the  
11 remaining assets in Petitioner’s share of the Trust to the claims of Petitioner’s creditors by  
12 threatening to interplead the remaining assets of the Trust. Any interpleader of the assets held in  
13 the Trust would take the assets out of the Trust and would immediately subject such assets to the  
14 claims of Petitioner’s creditors and legal process in violation of Premier Trust’s fiduciary duties  
15 and statutory duties. It is hardly plausible that Premier Trust with its extensive experience in  
16 administering trusts and with the benefit of the advice of competent legal counsel would find  
17 interpleader to be an appropriate method of resolving this situation. The mere suggestion of  
18 interpleader, rather than seeking this Court’s instruction under NRS 164 and 153, evidences  
19 Premier Trust’s unfathomable breach of its fiduciary duties to Petitioner.

20 49. Further compounding Premier Trust’s breach of its fiduciary duties, Premier Trust  
21 has breached its duty of impartiality by favoring other beneficiaries of the Trust over Petitioner  
22 and by treating Petitioner in a disparate manner from the other beneficiaries of the Trust. In  
23 particular, the trustees of the Emil Frei Trust, who have made demand upon Premier Trust against  
24 Petitioner’s share of the Trust and to whom Premier Trust has paid \$300,000 from Petitioner’s

1 share of the Trust, happen to also be a beneficiary of the Trust (Elizabeth Mary Frei) and the  
2 spouse of another beneficiary of the Trust (Lawrence Howe, married to beneficiary Judith Frei-  
3 Howe).

4 50. Premier Trust's egregious breach of its fiduciary and statutory duties by paying  
5 \$300,000 to the Emil Frei Trust without any authority to do so warrants the immediate removal of  
6 Premier Trust as trustee of the Trust. Petitioner, therefore, petitions the Court to order the removal  
7 of Premier Trust (to the extent that Petitioner's Notice of Removal is insufficient).

8 **Petition to Redress Breach of Fiduciary Duty**

9 51. Petitioner also petitions the Court pursuant to NRS 153.031(1)(m) and NRS  
10 164.015 to compel Premier Trust to redress its breaches of fiduciary duty.

11 52. In particular, Petitioner petitions the Court to order Premier Trust to pay \$300,000,  
12 plus pre- and post-judgment interest as allowed by law, to the Trust to be held as part of  
13 Petitioner's share of the Trust.

14 53. Petitioner further petitions the Court pursuant to NRS 153.031(3)(a) to reduce  
15 Premier Trust's trustee fee it has received or may receive for the administration of Petitioner's  
16 share of the Trust to \$0 and to order Premier Trust to disgorge and return to Petitioner's share of  
17 the Trust any trustee fees previously paid to Premier Trust for the administration of Petitioner's  
18 share of the Trust.

19 54. Petitioner further petitions the Court pursuant to NRS 153.031(3)(b) to order  
20 Premier Trust to pay all of Petitioner's attorneys' fees and costs incurred in bringing this Petition  
21 and that Premier Trust be held personally liable for such payment due to its egregious breach of  
22 its fiduciary duties in this case.

1           THEREFORE, Petitioner petitions the Court to enter the following orders:

2           A.     That the terms of the Trust be construed to declare that the Trust is a valid  
3 spendthrift trust pursuant to the terms of the Trust and pursuant to Nevada law;

4           B.     That the trustees of the Trust be compelled to comply with the terms of the Trust  
5 and to disregard and defeat any demand upon the Trust from Petitioner's creditors, including  
6 specifically the Emil Frei Trust;

7           C.     That the Court declare that the attempted pledge or assignment of Petitioner's  
8 interest in the Trust by way of the Settlement Agreement is void ab initio;

9           D.     That the Court confirm the removal of Premier Trust as trustee of the Trust, or in  
10 the alternative, order the removal of Premier Trust;

11          E.     That Premier Trust be ordered to pay \$300,000 to Petitioner's share of the Trust;

12          F.     That the trustee fee of Premier Trust be reduced to \$0 and that Premier Trust be  
13 ordered to return any trustee fee it has collected;

14          G.     That Premier Trust be ordered to pay the attorneys' fees and costs incurred by  
15 Petitioner in bringing this Petition;

16          H.     That the Court release jurisdiction of the Trust; and,

17          I.     For such other and further orders as this Court deems appropriate.

18         DATED this 18th day of November, 2014.

19                                 **CLEAR COUNSEL LAW GROUP**

20                                 

21                                 **JONATHAN W. BARLOW**

22                                 Nevada Bar No. 9964

23                                 Attorneys for Stephen Brock  
24